

A COMPLETE
SYSTEM OF PLEADING

COMPREHENDING THE MOST
APPROVED PRECEDENTS and FORMS of PRACTICE

CONSISTING OF
SUCH AS HAVE NEVER BEFORE BEEN PUBLISHED

WITH AN
INDEX to the PRINCIPAL WORK.
INCORPORATING AND MAKING IT A CONTINUATION OF
TOWNSHEND's and CORNWALL's TABLES
TO THE PRESENT TIME;

AS WELL AS AN
INDEX of REFERENCE to all the ANCIENT and
MODERN ENTRIES extant.

By JOHN WENTWORTH, Esq.
OF THE INNER TEMPLE, BARRISTER AT LAW.

*Ne quæ Studio dispôsta fideles
Intellecta priusquam sint contempta relinquant.* I UCRET.

V O L. IX.
CONTAINING
TRESPASS—SCIRE FACIAS.

L O N D O N :
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1799.

THE Practical Directions to the last (the Eighth) will chiefly apply to the Head of TRESPASS contained in this Volume. The Student will observe that the PLEAS in DENIAL and DISCHARGE are postponed to the PLEAS, &c. in EXCUSE and JUSTIFICATION of TRESPASS, for Convenience in forming the INDEX; and will remember that all the subordinate Heads of Precedents in the modern Books of Precedents and Reports, together with the old Entries, fall under the larger Division denoted by the Figures within Parentheses on the *right* Side of the Page in the ANALYSIS; and that the Precedents in the principal Work, denoted by paging on the *left* Side of the Page, although more minutely subdivided in the principal work (for the Student's Use and for Practice) than in the references; yet they follow together without such Subdivision in many instances under the larger Division; and the References to the ancient Entries are distinctly marked by small Heads, arising out of the general Head or larger Division, laid together to fix the Eye and Attention, for Use and Convenience in Practice: And on perusal of the ANALYSIS and the Figures of References, by turning to the INDEX as it follows will find (if he observes the Directions) how easily he can master the distribution. For Example, the Declarations in TRESPASS in the principal work are divided into minute Subdivisions, yet in the References to the more modern

Prece-

Precedents they follow without Subdivision. So this sometimes happens in the Pleas, &c. but they exactly follow their leading Head ; and I might have contented myself with pursuing my System in a more general Division, and still *complete* for the Purposes of the Profession ; but I am solicitous to give the Subdivisions as analitically as I can do with clearness, without embarrassing or confusing the Heads.

In SCIRE FACIAS I have not felt the Necessity to regard the Distribution of the Precedents for Practice ; yet in framing the INDEX I have still attempted to distribute the Head for practical Use.

J. WENTWORTH.

Inner Temple,
4th Jan. 1799.

TRESPASS.



I. To PERSONS.

MORRIS
against

} NORFOLK, to wit. Declaration for
Jonathan Morris complains assaulting plain-
of Joseph Forby, clerk, and tiff, and taking
away his gun.

FORBY, CLERK, AND ANOTHER. } of Joseph Forby, clerk, and
John Overland, being, &c.; for that the said defendants, on the
first of December 1780, with force and arms, to wit, swords,
flaves, flicks, and fists, at Thetford, in the said county of Nor-
folk, made an assault upon the said Jonathan, and then and there
beat, bruised, wounded, and ill-treated him, so that his life was
thereby in great danger, and then and there seized, took, and car-
ried away from the said Jonathan a gun of him the said Jonathan
of the value of twenty pounds, and converted and disposed of the
same to the use of the said defendants: [2d Count, common assault;
[3d Count, for that the said defendants, on the said first of December
1780, with force and arms, &c. at, &c. the goods and chattels, to wit,
two other guns of the said Jonathan of the value of fifty pounds then
and there found, and being seized, took, and carried away, and
converted and disposed thereof to their own use, and other wrongs,
&c. against the peace, &c. to the damage of the said Jonathan of
fifty pounds; and therefore, &c.

THO. WALKER.

First, General Issue: And for further plea in this behalf as to Plea,
the seizing, taking, and carrying away from the said Jonathan the
said gun in the said first Count of the said declaration mentioned,
and converting and disposing thereof to his own use above sup-
posed to have been committed by the said Joseph, he the said Joseph,
by leave, &c. (*ad lio non*); because he says, that long before and at
the said time when, &c. in the said first Count mentioned, one fir
Thomas Harris, knight, was and still is seised in his demesne as
of fee of and in the manor of Shuldhham, situate, lyin', and be-
ing in the parish of Shuldhham, in the said county of Norfolk, and
being so thereof seised, he the said fir Thomas, before the said
time when, &c. in the said first Count mentioned, to wit, on the
twenty-eighth of September 1779, at Thetford, in the said county

Sir T. H. seised
of the manor of
S.

Sir T. H. by a certain writing duly entered with the clerk of the peace.

Proferit in curia.

Nominated the defendant his gamekeeper.

Plaintiff on the manor using his gun in destroying game, being unqualified,

whereupon defendant, as gamekeeper of the manor, seized the same.

Transfer of the taking of the manor.

of Norfolk, by a certain writing then and there made under his hand and seal, duly entered with the clerk of the peace of the said county of N. wherein the said manor of Shuldham lies (which said writing, sealed with the seal of the said sir Thomas, and bearing date the same day and year aforesaid, the said Joseph now brings here into court), did nominate, and authorize and appoint the said Joseph to be his gamekeeper of and within the manor of Shuldham, with full power, licence, and authority to take and seize all such guns, bows, greyhounds, lurchers, setting dogs, or other dogs, to kill hares or conies, ferrets, fannells, low bells, flays, or other nets, hair pipes, or other snares or engines for the taking or killing of hares, pheasants, partridges, or other game, as within the precincts of the said manor should be used by any person or persons who by law are prohibited to keep the same, and also to preserve any hare, pheasant, partridge, or any other game whatsoever in and upon the said manor, as in and by the said writing (relation being thereunto had) may more fully and at large appear: And the said Joseph further saith, that a little before the said times when, &c. to wit, on the said first of December in the said first Count mentioned, the said Jonathan was in and upon the said manor, to wit, in a certain place there called Boswell Wood, in the said parish of Shuldham, in the said county of N. using the said gun there for the purpose of shooting game in and upon the said manor, and the said John then and there being a person by law prohibited to keep or use the said gun for that purpose, and not being qualified by the laws and statutes of this realm so to do, whereupon the said Joseph, as such gamekeeper as aforesaid, at the said time when, &c. in the said first Count of the said declaration mentioned in and upon the said manor, to wit, in the said close called Boswell Wood, in the parish aforesaid, in the said county of Norfolk, did take and seize the said gun, and carry the same away in the said Jonathan, as he lawfully might for the cause aforesaid; without this, that he the said Joseph is guilty of seizing and taking the said gun in the said first Count of the said declaration mentioned, at Thetford aforesaid, or elsewhere out of the said manor of Shuldham, in the parish of Shuldham, in the said county of Norfolk, which are the said seizing, taking, and carrying away from the said Jonathan the said gun in the said first Count of the said declaration mentioned, and converting and disposing thereof; were more, &c.; and this, &c.; wherefore, &c. [Third plea, as to seizing and taking the gun, leave and licence]

ROB. GRAHAM.

Replication.

Admit sir T. H.'s seizure.

And the said Jonathan, as to the said plea of the said Joseph by him secondly above pleaded in bar, as to the seizing, &c. by the said Joseph committed, (*precludi non*); because he says, that true it is that sir Thomas Harris, knight, in that plea mentioned, was seised in his demesne as of fee of land in the said manor of Shuldham in that plea also mentioned, in manner and form as in that plea is also mentioned and alledged; and being so seised thereof, the said

said sir Thomas, by such writing under his hand, and duly entered with the clerk of the peace of the said county of Norfolk, as in the said plea is above mentioned, did authorize, nominate, and appoint the said Joseph to be such gamekeeper, with such power, licence, and authority as the said Joseph has in his said plea by him secondly above pleaded in bar in that behalf alledged; but the said Jonathan further says, that the said Joseph of his own wrong, and without the residue of the cause by him above in his said plea alledged, at the said time when, &c. in the said first Count of the said declaration mentioned, seized, took, and carried away from the said Jonathan the said gun in the said first Count mentioned, and converted and disposed thereof to his own use, in manner and form as the said Jonathan hath in his first Count of the said declaration above thereof complained against him; and this he prays may be enquired of by the country. [Replication to plea of leave and licence, *de injuria sua absque tali causa.*]

Admits the defendant's deputation.

De injuria sua absque tali causa.

J. HENNIKER.

Afterwards, on the day and at the place within mentioned, before Alexander, lord Loughborough, chief justice of our lord the king of the bench, and Fleetwood Bury, esquire, associated to the said lord Loughborough and other justices of our said lord the king assigned to take the assizes in the county of N. by form of the statute, &c. by virtue of the writ of our said lord the king of *si non omnes*, come as well within-named Jonathan Morris, by his attorney within written, as the within-named Joseph Forby and John Overland, by their attorney also within written, and the jurors whereof the jury whereof mention is within made, impelled, and drawn by ballot, according to the form of the statute, &c. being likewise called come, who being approved and sworn to speak the truth, the justices within contained say upon their oath as to the issue first within joined between the said parties, that the said Joseph and John are guilty of the premites within laid to their charge, in manner and form as the said Jonathan hath within thereof complained against them: And as to the issue secondly within joined between the said parties, as to the within written plea of the said Joseph by him secondly within pleaded in bar, as to the seizing, taking, and carrying away the said sum within-mentioned from the said Jonathan in the said first Count of the said declaration mentioned, and converting and disposing thereof to his own use, in manner and form as the said Jonathan hath in his said first Count of the said declaration within thereof complained, the said jurors upon their said oath further say, that the said Joseph, of his own wrong, and without the residue of the cause by him within in his said plea alledged, at the within time when, &c. in the said first Count of the said declaration mentioned, seized, took, and carried away from the said Jonathan the said sum in the said first Count of the said declaration mentioned, and converted and disposed thereof to his own use, in manner and form as the said Jonathan hath above in his said first Count of the declaration mentioned within complained

Postea.

Si non omnes.

First issue for the plaintiff.

Second issue for the plaintiff.

TRESPASS.—THE DECLARATION—ASSAULT, &

plained against him. [Verdict for plaintiff on last issue]: And the jurors aforesaid assess the damages of the said Jonathan by reason of the premises within specified, besides his costs and charges by him expended about his suit in this behalf to twenty-six pounds five shillings for his said costs and charges to forty shillings; therefore, &c.

Declaration in
trespas for as-
sault and batte-
ry, wounding,
maiming, false
imprisoning, and
bringing plaintiff to
a person who
had got the itch,
whereby plain-
tiff caught it.

COUNTY OF NORTHAMPTON, to wit. Robert Croft complains of William Adams being, &c.; for that the said William heretofore, to wit, on, &c. at, &c. with force and arms, to wit, with swords, staves, canes, sticks, whips, bludgeons, knives, keys, and other offensive weapons, and with his fists, hands, and feet, made an assault upon the said Robert, and then and there beat, kicked, bruised, wounded, maimed, and ill-treated him the said Robert, and struck and kicked him in and on the face, head, neck, back, breasts, arms, and legs, and other parts of his body, many grievous and violent blows, strokes, and kicks, and thereby cut, bruised, and wounded the head, face, &c. and other parts of the body of the said plaintiff, and then and there imprisoned him, and kept and detained him in prison there for a long space of time, to wit, for the space of six months, against his will, and without any legal cause whatsoever, and then and there tied and fastened him to a certain person there, who then and there was infected with the itch, and was filthy and nasty, and kept him so tied and fastened for a long space of time, to wit, for the space of twenty weeks, whereby the said plaintiff then and there caught the same of him, by means of which premises the said plaintiff then and there became sick, weak, and distempered, and remained and continued so sick, weak, and distempered for a long space of time, to wit, for the space of two months, and was all the time aforesaid prevented and hindered from, and rendered incapable of transacting and following his lawful and necessary affairs and business which he otherwise might and would have done, and during all that time underwent and suffered great pain and anguish of body and anxiety of mind, to the great peril and danger of his life, to wit, at, &c.: And also for that the said William, on, &c. with force and arms, &c. to wit, with swords, &c. and with his fists, &c. made, &c. and then and there again beat, &c. him the said Robert, and struck, smote, and kicked him in and upon his head, &c. and other parts of his body, many grievous and violent blows, &c. and thereby violently cut, &c. and then and there imprisoned, &c. against his will, and without any legal cause whatsoever; by means of which premises the said Robert became sick, weak, and distempered, and remained and continued so sick, &c. for a long space of, &c. and thereby was, during all the time last aforesaid, hindered and prevented, &c. which he otherwise might and ought to have done, and during all that time underwent, &c.; and the said William then and there rent, spoiled, damaged, and destroyed the clothes and wearing apparel of the said Robert, to wit, two coats, two waistcoats,

Count, im-
prisoning, tear-
cloths, and
distressing the ty-
ing, &c.

PLEA—JUSTIFICATION BY AUTHORITY OF LAW—(GOALER.)

waistcoats, one pair of breeches, one waistcoat, one neckcloth, two handkerchiefs, one pair of shoes, and two pair of stockings, wherewith he was then and there clothed, and which he then and had on of the value of ten pounds, so that they became of no use or value to him the said Robert: And also for that the said William, on, &c. at, &c. with force and arms, to wit, with swords, &c. and with his fists, &c. made another assault upon the said Robert, and then and there again beat, &c. so that his life was thereby greatly despaired of, and other wrongs to the said Robert then and there did, against the peace of our lord the now king, and to the damage of the said Robert of five hundred pounds; and therefore he brings his suit.

3d Count, for a common assault

First plea, not guilty: And for further plea as to the said assaulting, beating, kicking, wounding, and ill treating the said plaintiff in the said first Count of the said declaration mentioned, and striking and kicking him the said blows, strokes, and kicks in that Count mentioned, and thereby cutting, bruising, and wounding him; and also as to the imprisoning him, and keeping and detaining him in prison for the said time in the said first Count in that respect mentioned, and tying and fastening him to the said person in that Count also mentioned, and keeping him so tied and fastened for the said time in the said first Count in that respect mentioned above supposed to be done by the said William, by leave of, &c. according to, &c. says (*actio non*); because he says, before the said time when, &c. to wit, at the delivery of the gaol of our lord the king of the county of Southampton of the prisoners therein being, holden at the castle of Winchester, in and for the said county, on, &c. in the twenty-seventh year of the reign of our sovereign lord George the Third, king of Great Britain, &c. before Francis Buller, esquire, one of the justices of our said lord the king assigned to hold pleas before the king himself, sir John Wilson, knight, one of the justices of our said lord the king of his said court of common bench, and others their fellow-justices of our said lord the king duly assigned in that behalf, the said Robert was in due form of law committed by the said court, so then and there holden as aforesaid, to the house of correction at G. in the county of S. aforesaid, to be there imprisoned for one year then next following, and then discharged; and the said Robert was then and there delivered into the custody of the said William, who then and from that time hitherto hath been keeper of the said gaol or house of correction, and was then and there carried and conveyed by the said William to the said house of correction, under and by virtue of the said commitment, and was then and there kept and detained in such custody under and by virtue of the said commitment, from thence until, and at and after the said time when, &c. his said imprisonment under the said commitment not being then expired, as he lawfully might do for the cause aforesaid: And the said William in fact further saith, that the said Robert, so being in the custody of the said William, as such keeper of the said house of correction as aforesaid, he the said Robert,

Plea 1st, not guilty; that plaintiff was committed to the house of correction, where defendant was keeper by the judge of assize to be imprisoned for a year, and that he was malicious, and justifies all the trespasses in the first Count but the maiming.

while he was in such custody, and before the said time when, &c. to wit, on, &c. in the said first Count mentioned, at, &c. in, &c. with force and arms together with the said other person in the said first Count mentioned, and divers other prisoners then being in the said house of correction in the custody of the said William, as such keeper thereof as aforesaid, did behave in a riotous, tumultuous, and disorderly manner; and the said Robert did also then and there excite and endeavour to persuade such other persons to break the said prison, and to escape from thence; and the said Robert, and the said other person in the said first Count mentioned, and the said other prisoners so behaving in such riotous, tumultuous, and disorderly manner in the said house of correction, then and there refused to desist from so doing, for which reason he the said William, in the discharge of his duty as such keeper of the said house of correction, and for the necessary maintenance and preservation of good order in the said prison at the said time when, &c. at the said house of correction, did gently and moderately correct the said Robert for his said misbehaviour in the said house of correction, and in so doing did necessarily strike the said Robert the said blows and strokes in the said first Count mentioned, and did necessarily and unavoidably a little wound and ill treat the said Robert as he lawfully might for the cause aforesaid, and in order to prevent and put a stop to such misbehaviour, did necessarily tie and fasten the said Robert to the said other person in the said first Count mentioned, and keep and detain him so tied and fastened for the said space of time in the said first Count in that respect mentioned, as he lawfully might for the cause aforesaid, which are the same trespass in the introductory part of this plea mentioned, and whercof the said Robert hath above thereof complained against him; and this, &c.; wherefore, &c. if, &c.:

3d Plea, justifies the assault and imprisonment in the first Count under the said commitment.

And for further plea as to the said assaulting and imprisoning the said Robert, and keeping and detaining him in prison for the space of time in the said first Count of the said declaration in that respect mentioned above supposed to be done by the said William, he the said William, by leave of, &c. according to, &c. says (*alio non*); because he says, that before the said time when, &c. to wit, at the delivery of the gaol of our lord the king of the county of S. of the prisoners therein being, holden at, &c. in and for the said county, on, &c. in the twenty-seventh year of the reign of, &c. before F. B. esquire, one of, &c. the said Robert was in due form of law committed by the said court, so then and there holden as aforesaid, to the said house of correction at, &c. to be there imprisoned for one year then next following and then discharged; and the said Robert was thereupon then and there delivered into the custody of the said William, then and from that time hitherto being keeper of the said house of correction, and was then and there carried and conveyed by the said William to the said house of correction, under and by virtue of the said commitment, and was then and there kept and detained in such custody under and by virtue of the said commitment, from thence until and at and after the said time when, &c. his said imprisonment under the said commitment

AUTHORITY OF LAW—MODERATE CORRECTION.

7

mitment not being then expired, as he lawfully might for the cause aforesaid, which are the same trespasss in the introductory part of this plea mentioned, and whereof the said Robert hath above thereof complained against him; and this, &c.; wherefore, &c. if, &c.: And for further plea as to the assaulting, beating, bruising, wounding, and ill treating him the said Robert in the said second Count of the said declaration mentioned, and striking, smiting, and kicking him the said strokes, blows, and kicks in that Count mentioned, and thereby cutting, bruising, and wounding him, and also as to the imprisoning him the said Robert, and keeping and detaining him in prison for the said time in the said second Count mentioned, and also as to the tearing, renting, spoiling, damaging, and destroying the clothes and wearing apparel of the said Robert in the said second Count mentioned, above supposed to have been done by the said William, he the said William by like leave of, &c. according to, &c. says, (*actio non*); because he says, that before the said time when, &c. to wit, at the delivery of the gaol of our lord the king of the county of S. of the prisoners therein being holden, at, &c. in and for the said county, on, &c. in the twenty-seventh year of, &c. before F. B. Esq. one of, &c. the said Robert was in due form of law committed by the said court so then and there holden as aforesaid, to the house of correction, at, &c. to be there imprisoned for one year then next following, and then discharged; and the said Robert was thereupon then and there delivered into the custody of the said William, then and from that time hitherto being keeper of the said house of correction, and was then and there carried and conveyed by the said William to the said house of correction under and by virtue of the said commitment, and was then and there kept and detained in such custody under and by virtue of the said commitment from thence until, and at, and after the said second time when, &c. his said imprisonment under the said commitment not being then expired, as he lawfully might for the cause aforesaid: And the said William in fact further saith, that the said Robert, so being in the custody of the said William as such keeper of the said house of correction as aforesaid, he the said Robert, while he was in such custody, and just before the said time when, &c. to wit, on, &c. in the said second Count mentioned, at, &c. in, &c. with force and arms, together with divers other persons then being in the said house of correction, in the custody of the said William as such keeper thereof as aforesaid, did behave in a riotous, &c. manner; and the said Robert did also then and there excite and endeavour to persuade such other persons to break the prison and to escape from thence; and the said Robert and the said other persons, so behaving in such riotous, &c. manner in the said house of correction, then and there refused to desist from so doing, for which reason he the said William, in the discharge of his duty as such keeper of the said house of correction, and for the necessary maintenance and preservation of good order in the said house of correction, did gently and moderately correct the said Robert for the said misbe-

4th Plea justifies all the trespasss, &c. in the 2d Count, but the maiming for the same cause as in 2d plea, and concludes with *molliter manus imposit.*

TRESPASS.—PLEA—JUSTIFICATION BY OFFICER

haviour in the said house of correction, and in so doing did necessarily beat, bruise, wound, and ill treat the said Robert, and did smite and kick the said Robert the said blows, strokes, and kicks in the said second Count mentioned, and did thereby unavoidably a little cut, bruise, and wound the said Robert, and did then and there necessarily and unavoidably a little tear, &c. the said clothes and wearing apparel of the said Robert in the said second Count mentioned, as he lawfully might for the cause which are the same trespasss in the introductory part of this plea mentioned, and whereof the said R. hath above thereof complained against him; and this, &c.

5th Plea justifies the assault and imprisonment in the 2d Count for the same cause as in the 3d plea.

wherefore, &c. if, &c.: And for further plea as to the said assaulting and imprisoning the said Robert, and keeping and detaining him in prison for the said time in the said second Count of the said declaration mentioned, above supposed, &c. he the said William by like leave of, &c. according, &c. says, *alio non*; because he says, that before the said time when, &c. &c. to wit, at the said delivery of, &c. before F. B. esquire, one of, &c. &c. the said Robert was in due form of law committed by the said court so then and there holden as aforesaid, to the house of correction at, &c. to be there imprisoned for one year then next following and then discharged; and the said Robert was then and there delivered into the custody of the said William, then and from that time hitherto being, &c. and was then and there carried, &c. under and by virtue of, &c. and was then and there kept and detained in such custody under and by virtue of, &c. from thence until, and at, and after the said second time when, &c. his said imprisonment not being then expired, as he lawfully might for the cause aforesaid, which are the same trespasss in the introductory part of this plea mentioned, and whereof the said Robert hath above thereof complained against him; and this, &c.; wherefore, &c. if, &c.: And for further plea as to

6th Plea justifies the trespasss in the 3d Count for the same cause as in the 2d and 4th pleas.

the said assaulting, cutting, beating, wounding, and ill treating the said Robert in the said last Count of the said declaration mentioned, above supposed, &c. he the said William, by leave of, &c. according, &c. says, *alio non*; because he says, that before the said time when, &c. to wit, at the delivery of, &c. before F. B. esquire, one of, &c. &c. the said Robert was in due form of law committed by the said court so then and there holden as aforesaid, to the house of correction at, &c. to be there imprisoned for one year then next following, and then discharged; and the said Robert was thereupon then and there delivered into the custody of the said William then and from that time hitherto being, &c. and was then and there carried, &c. to the said house of correction under and by virtue of, &c. and was then and there kept, &c. under and by virtue, &c. from thence until and after the said time when, &c. his said imprisonment under the said commitment not being then expired; and the said William in fact further saith, that the said Robert, so being in the custody of the said William as such keeper of the said house of correction as aforesaid, he the said Robert, while he was in such custody as aforesaid, and just before the said time when, &c. to wit, on, &c. at, &c. with force and arms, together

(GOALER)—REPLICATION—NEW ASSIGNMENT.

gether with divers other prisoners then being in the said house of correction in the custody of the said William as such keeper thereof as afore said, did behave in a riotous, &c. manner; and the said Robert did also then and there excite and endeavour to persuade such other prisoners to break the said prison, and to escape from thence; and the said Robert and the said other prisoners, so behaving in such riotous, &c. manner in the said house of correction then and there refused to desist from so doing, for which reason he the said William in discharge of his duty as such keeper of the said house of correction, and for the necessary maintenance and preservation of good order in the said house of correction, at the said time when, &c. in the said house of correction, did gently and moderately correct the said Robert for his said misbehaviour in the said house of correction, and in so doing did necessarily and unavoidably a little cut, &c. the said Robert, as he lawfully might for the cause afore said, which are the same trespass in the introductory part of this plea mentioned, and whereof the said Robert hath above thereof complained against him; and this, &c.; wherefore, &c. if, &c.

S. MARSHALL.

And the said Robert, as to the said plea of the said William by Replication him secondly above pleaded in bar as to the trespass in the introduction of that plea mentioned, says, that he by reason of any thing in that plea alledged ought not to be barred from having and maintaining his said action thereof against him, because he says, that the said William of his own wrong, and without any such cause as is by him in his said plea by him secondly above pleaded in bar in that behalf alledged, with force and arms, &c. at the said time when, &c. to wit, at, &c. assaulted, kicked, beat, bruised, wounded, and ill treated the said Robert, as in the said first Count of the said declaration mentioned, and struck and kicked him the said blows, strokes, and kicks in that Count mentioned, and thereby cut, bruised, and wounded him, and also imprisoned him, and kept and detained him in prison for the said space of time in the said first Count of the said declaration in that respect mentioned, and tied and fastened him to the said other person in that Count also mentioned, and kept him so tied and fastened for the said time in the said first Count in that respect mentioned, in manner and form as the said Robert hath above thereof complained against him, and of this he puts himself upon the country, &c.: And the said Robert in fact further says, that he exhibited his bill in this cause, and brought his suit thereupon against the said William, not only for the said trespass in the said plea of the said William by him secondly above pleaded in bar mentioned, and thereby attempted to be justified, but also for that the said William, on, &c. at, &c. with force and arms, &c. made an assault upon the said Robert, and there beat, kicked, bruised, wounded, maimed, and ill treated him the said Robert, and struck and kicked him in and upon his head, face, neck, back, breast, arms, legs, thighs, hands, and

TRESPASS.—REPLICATION—NEW ASSIGNMENT.

and other parts of his body, many grievous and violent blows and kicks, and thereby cut, bruised, and wounded the head, face, &c. of the said Robert, and then and there imprisoned him, and kept and detained him in prison there for a long space of time, to wit, for the space of six months, against his will and without any legal cause whatsoever, and then and there tied and fastened him to a certain person who was then and there infected with the itch, and was filthy and nasty, and kept him so tied and fastened for a long space of time, to wit, for the space of twenty weeks, whereby the said Robert then and there caught the same of him; by means of which said premises he the said Robert became sick, sore, and disordered, and remained and continued so weak and disordered for a long time, to wit, for the space of two months, and was all that time aforesaid hindered and prevented from, and rendered incapable of transacting and following his lawful and necessary affairs and business, which he otherwise might and would have done, and during all that time underwent and suffered great pain and anguish of body and anxiety of mind, to the great peril and danger of his life, to wit, at, &c. in manner and form as the said Robert hath above in the said first Count of the said declaration complained against him, which said trespass so above a-new assigned, is another and different trespass from the said trespass in the said plea of the said William by him secondly above pleaded in bar mentioned, and thereby attempted to be justified; wherefore inasmuch as the said William hath not answered the said trespass so above a-new assigned, the said Robert prays judgment and his damages by him sustained on occasion of the committing thereof: And the said plaintiff, as to the said plea of the said defendant by him thirdly above pleaded in bar as to the assaulting and imprisoning the said plaintiff, and keeping and detaining him in prison for the said time in the said first Count in that respect mentioned, above done by the said defendant, says, *precludi non*; because he says, that he exhibited, &c. against the said defendant for another and different trespass than the said trespass mentioned in the said plea of the said defendant by him thirdly above pleaded in bar, and thereby attempted to be put in issue, to wit, for that the said defendant in the said, &c. at, &c. with force and arms, &c. assaulted and imprisoned the said plaintiff, and kept and detained him in prison for the said space of time in the said declaration in that behalf mentioned, without any legal cause whatsoever; wherefore inasmuch as the said defendant hath not answered the said trespass above a-new assigned, the said plaintiff prays judgment and his damages by him sustained on occasion of the committing thereof to be adjudged to him, &c. [Replication to the 4th and 5th pleas same as the two last; replication to the 6th plea same as the first of the two last, to wit, *de injuria*, &c. and new assignment.] -

New assignment
to 3d plea.

DECLARATION—FALSE IMPRISONMENT.

11

In the Common Pleas.

MIDDLESEX, to wit. George Groves, late of, &c. was attached to answer John Barrs in a plea; wherefore heretofore with force and arms he made an assault on the said John, to wit, at, &c. in, &c. and beat, bruised, wounded, and ill treated him there, so that his life was thereby greatly despaired of, and without any legal or probable cause whatsoever, against the laws of the land; and against the will of the said John, there imprisoned him, and kept and detained him in prison, and there without any justifiable cause charged the watch with the said John, and caused and procured him to be forcibly conveyed in the custody of the said watchman to a watch-house, then and there to be confined for a long time, and until he was afterwards, with like force, taken and conveyed before one A. B. esquire, then and there being one of his majesty's justices assigned to keep the peace in and for the said county, and also to hear and determine divers felonies, trespasses, and other misdemeanors committed in the same, and until he the said John for his deliverance from the said imprisonment was forced and obliged to find and procure, and did there find and procure bail for his appearance before the said A. B. or some other of his said majesty's justices of the peace in and for the said county aforesaid, by means whereof the said John was during all that time hindered and prevented from following and pursuing his lawful and necessary affairs and business, which he would and might have done, and was put to great trouble and inconvenience thereby, and was forced and obliged to lay out and expend, and did lay out and expend a large sum of money in and about the finding and procuring the said bail, and in effecting his discharge from the said imprisonment; and also wherefore with force and arms he the said George, at, &c. in, &c. made another assault on the said John, and then and there again beat, &c. so that his life was thereby greatly despaired of, and without any legal or probable cause whatsoever, and against the laws of the land, there imprisoned him and caused and procured him to be there imprisoned and kept and detained in prison for another long time; by means whereof he the said John was, during all that time, hindered and prevented from following and pursuing his lawful and necessary affairs and business, which he otherwise would and might have done, and was put to great trouble, expence, and inconvenience: And also wherefore with force and arms the said George made another assault upon the said John, at, &c. in, &c. and there again beat, &c. so that his life was thereby greatly despaired of, and other wrongs to the said John then and there did, to the great damage of the said John, and against the peace of our lord the now king, and thereupon the said John, by A. B. his attorney, complains; for that the said George heretofore, to wit, on, &c. with force and arms, made an assault on the said John, at, &c. in, &c. and then and there beat, &c. so that his life was thereby greatly despaired of, and without any legal or probable cause whatsoever, and against the laws of the land, and against the will of the said John, then and there

Declaration for an assault and false imprisonment, charging plaintiff with the watch, causing him to be taken before a justice, and to find bail for his further appearance.

TRESPASS.—DECLARATION FOR ADULTERY

there imprisoned him, and kept and detained him in prison, and then and there without any justifiable cause charged the watch with him the said J, and caused and procured him to be forcibly conveyed in the custody of the said watchman there, and then and there to be confined for a long time, to wit, for the space of twenty-four hours then next following, and until he was afterwards with like force taken and conveyed before one A. B. esquire, then and there being one of, &c. and until he the said John for his deliverance from the said imprisonment was forced and obliged to find and procure, and did find and procure bail for his appearance before the said A. B. or some other of his majesty's justices of the peace in and for the county aforesaid, by means whereof the said John was during all that time hindered and prevented from following and pursuing his lawful and necessary affairs and business, which he otherwise might and would have done, and was put to great trouble and inconvenience thereby, and was forced and obliged to lay out and expend, and did lay out and expend a large sum of money, to wit, the sum of twenty pounds of lawful, &c. in and about the finding and procuring the said bail, and in effecting his discharge from the said imprisonment, to wit, at, &c. : And also for that he the said George afterwards, to wit, on, &c. with force and arms, &c. made another assault on the said John, and then and there again beat, &c. so that his life was thereby greatly despaired of, and without any legal or probable cause, and against the laws of the land, then and there imprisoned him, and caused and procured him to be then and there imprisoned, and there kept and detained him in prison for another long time, to wit, for the space of twenty-four hours then next following ; by means whereof the said John was during all that time hindered, &c. his lawful, &c. and underwent and suffered great pain of body and anxiety of mind, and was put to great trouble, expence, and inconvenience thereby, to wit, at, &c. : And also for that he the said George afterwards, to wit, on, &c. made another assault on the said John, and then and there again beat, &c. so that his life was thereby greatly despaired of, and other wrongs to the said John then and there did, to the great damage of the said John, and against the peace of our lord the now king ; wherefore the said John saith that he is injured, and hath sustained damage to the value of one hundred pounds ; and therefore he brings his suit. &c.

T. BARROW.

2d Count, more general.

3d Count, for a common assault.

Declaration for debauching plaintiff's wife and getting her with child ; per good plaintiff was put to expence in delivering her.

FOR that the said defendant, on, &c. with force and arms, &c. made an assault on one Ann, then and still being the wife of the said plaintiff, to wit, at Westminster aforesaid, and then and there beat and ill treated the said Ann, and then and there ravished, &c. whereby the said Ann then and there became pregnant and sick with child, and afterwards, to wit, on, &c. at, &c. was delivered of a female child ; by means of which said pregnancy and being sick with child, and delivery thereof as aforesaid, and other

the

the premises aforesaid, he the said plaintiff not only for a long time, to wit, from thence until the day of exhibiting the bill of the said plaintiff, lost and was deprived of the comfort, fellowship, aid, and assistance of his said wife in his domestic affairs, which he the said plaintiff during all that time ought to have had and might have had, to wit, at, &c. but also was forced and obliged during all the time aforesaid, to lay out and expend, and did lay out and expend a large sum of money, to wit, the sum of fifty pounds of, &c. in and about recovering her from such her pregnancy and delivery of such her child, and in her lying in thereof, and in the nursing and maintaining of the said child, to wit, at, &c. and other enormities to the said plaintiff then and there did against the peace of, &c. and to the damage of the said plaintiff of five thousand pounds; and therefore he brings his suit, &c.

LONDON, to wit. I. I. late of, &c. was attached to answer I. H. in a plea, wherefore with force and arms he made an assault upon E. H. the wife of the said plaintiff, at London aforesaid, to wit, in the parish of, &c. and did ravish, lye with, debauch, and carnally know the said E. H. whereby the said plaintiff lost and was deprived of the comfort, fellowship, and society of his said wife, and other wrongs to the said plaintiff then and there did to the great damage of the said plaintiff, and against the peace of our lord the now king, whereupon the said plaintiff, by A. B. his attorney, complains, for that the said defendant on, &c. and on divers other days and times, between that day and the day of suing out the original writ of the said plaintiff, with force and arms at, &c. in, &c. made an assault on the said E. H. the wife of the said plaintiff, and at those several days and times did debauch, &c. the said E. H. whereby the said plaintiff lost and was deprived of the comfort, &c. of his said wife for all the time aforesaid, and other wrongs, &c. to the great damage of the said plaintiff and against the peace of, &c. whereupon the said plaintiff saith that he is injured and hath sustained damage to the value of one thousand pounds; and therefore he brings his suit.

Declaration in the C. B. for crim. con. with the plaintiff's wife.

And the said defendant, by A. B. his attorney, comes and defends the wrong and injury, when, &c. and saith that he is not guilty of the *premises above laid to his charge* in manner and form as the said plaintiff hath above thereof complained against him, and of this he puts himself upon the country, &c.; and for further plea in this behalf, the said defendant by leave of, &c. says (*ad hoc non*); because he says, that after the said several times, when, &c. to wit, on, &c. at, &c. in, &c. it was mutually agreed by and between the said defendant and the said plaintiff, that by way of atonement and satisfaction for the said several trespasses and all damages sustained by the said plaintiff on occasion thereof, the said defendant should at his own proper costs and charges maintain and keep a certain child of him the said plaintiff begotten on the

Plea, accord and satisfaction.

TRESPASS.—REPLICATION.

the body of his said wife; and the said defendant in fact further says, that in pursuance of the said agreement, he the said defendant at his own proper costs and charges hath from thence hitherto maintained and kept, and still maintains and keeps the said child, to wit, at, &c. in, &c. and this, &c. wherefore, &c. if, &c.

I. C. BOLTON.

Replication, that the agreement was not complied with.

And the said plaintiff, as to the said plea of the said defendant by him first above pleaded, and whereof he hath put himself upon the country, he the said plaintiff doth the like, &c. and as to the said plea of the said defendant by him lastly above pleaded, the said plaintiff says, that he, by reason of any thing in that plea alledged, ought not to be barred from having his aforesaid action thereof maintained against him, because protesting that the said last-mentioned plea and the matters therein contained, in manner and form as the same are above pleaded and set forth, are wholly insufficient in law, the said plaintiff admits to be true, that it was mutually agreed by and between the said defendant and the said plaintiff, in manner and form as the said defendant hath above in his said last mentioned plea in that behalf alledged; yet for replication in this behalf the said plaintiff saith, that at the time of the making of the said agreement, to wit, on, &c. at, &c. in, &c. it was further agreed by and between the said plaintiff and the said defendant, that in order to complete the said atonement and satisfaction in that plea mentioned, the said defendant should execute and deliver to the said plaintiff a certain bond or obligation in the penal sum of one hundred pounds of good and lawful money of Great Britain, conditioned amongst other things for the maintenance and keeping of the said child in that plea also mentioned; and although he the said plaintiff after the making of the said last-mentioned agreement, to wit, on, &c. at, &c. caused to be prepared the draft of a certain bond or obligation in the penal sum of one hundred pounds of good and lawful money of Great Britain, conditioned as aforesaid, and did then and there tender the said draft to the said defendant for his perusal and approbation thereof, in order that the same might be ingrossed according to the tenor and effect, true intent and meaning of the said last-mentioned agreement; yet the said defendant then and there, without any reasonable or probable cause whatsoever, wholly refused to execute or deliver, nor hath he at any time since executed or delivered to the said plaintiff any such bond or obligation, but hath hitherto wholly refused and neglected so to do, contrary to the tenor and effect, true intent and meaning of the said last-mentioned agreement, to wit, at L. aforesaid, at, &c.; and this he the said plaintiff is ready to verify, wherefore inasmuch as the said defendant hath above acknowledged the committing of the said several trespasses in the said declaration mentioned, he the said plaintiff prays judgment and his damages, by him sustained by the occasion of the committing thereof, to be adjudged to him, &c.

NASH GROSE.
LONDON,

DECLARATION (ASSAULT)—PLEA (RELEASE.)

15

LONDON, to wit. E. C. complains of T. E. for that the said T. E. on, &c. at, &c. with force and arms, to wit, with swords, staves, sticks, fists, and knives, made an assault upon the said E. C. and then and there beat, bruised, wounded, and ill treated him, so that his life was thereby greatly despaired of, and then and there with a certain spying glass which he the said T. E. then and there had and held in his hands, gave and struck the said E. C. divers and very many grievous and severe strokes and blows in, upon, across, and over his head, face, skull, eyes, nose, forehead, shoulders, and other parts of his body, and thereby greatly cut and wounded the head, face, and eyes of the said E. C. and made divers large and deep gashes, cuts, and wounds therein, whereby divers large quantities of blood then and there gushed and flowed from those cuts and wounds, by means of which said several blows, strokes, bruises, cuts, and wounds, he the said E. C. hath not only suffered great pain, anguish, and torture both of body and mind, but he hath from thence hitherto been in a great measure deprived of the sight of his left eye, and is very likely to be wholly deprived of the sight thereof, to wit, at, &c. ; and also for that the said T. E. afterwards, to wit, on, &c. at, &c. with force and arms, to wit, with swords, staves, &c. made another assault upon the said E. C. and then and there again beat, &c. so that his life was thereby again greatly despaired of and other wrongs to the said E. C. then and there did to his great damage and against the peace of our lord the now king ; wherefore the said E. C. saith that he is injured, and hath sustained damage to the value of two hundred pounds, and therefore he brings his suit.

Declaration for an assault, beating plaintiff, cutting him about the head and eyes so that he was deprived of the sight of his left eye.

T. BARROW.

Defendant pleaded the general issue, neas and a half, upon which it became not guilty : Some time after plaintiff necessary to plead the same in the following executed a general release to defendant of all actions in consideration of seven guineas and a half, upon which it became necessary to plead the same in the following manner :

And now at this day, to wit, on Wednesday next after fifteen days of Easter, in Easter Term, in the twenty-ninth year of the reign of our lord the now king, until which day the said plea was last continued, cometh the said T. E. by his attorney aforesaid, and says, that the said E. C. ought not to have or maintain his aforesaid action thereof against him said T. E. because he says, that he the said E. C. since the exhibiting the bill of the said E. C. against the said T. E. and pending the aforesaid suit, and since the said issue hath been so joined therein, to wit, on, &c. in the twenty-ninth year of the reign aforesaid, to wit, at, &c. in, &c. by his certain writing of release then and there made by him the said E. C. to the said T. E. and sealed with the seal of the said E. C. and which the said Thomas now brings here into court, the date whereof is the day and year last aforesaid, for the considerations therein mentioned, remised, released, and for ever quit-claimed unto the said T. E. his heirs, executors, or administrators, all and all

Plea of general release.

TRESPASS.—DECLARATION—ASSAULT*.

all manner of action and actions, cause and causes of actions, suits, bills, bonds, writings, obligations, debts, dues, accounts, sum and sums of money, judgments, executions, extents, quarrels, controversies, trespasses, damages, and demands whatsoever, both in law and equity, or otherwise howsoever which he the said E. C. ever had against the said T. E. or which he the said E. C. his heirs, executors, or administrators should or might thereafter have, claim, challenge, or demand, for or by reason or means of any matter, cause, or thing whatsoever, from the beginning of the world unto the day of the date of the said deed or writing of release, as by the said deed or writing of release more fully appears; and this, &c. wherefore, &c. if, &c.

MIDDLESEX, to wit. Michael Lascelles late of, &c. was
Declaration
 against defend- attached to answer Anthony de Rosier in a plea; wherefore he the
 ant, captain of said Michael with force and arms, &c. at W. in the said county
 a ship, for an of Middlesex, made an assault upon the said A. and there beat,
 assault on plain- bruiled, wounded, and ill treated him, and there tied and bound,
 tiff, and also for and caused and procured him the said A. to be tied and bound to a
 selling him as and caused and procured him the said A. to be tied and bound to a
 a slave at the certain cannon, and there kept and continued him so tied and
 island of St. bound to the said cannon for a long space of time, and whilst he
 Helena, where- was so tied and bound gave and struck, and caused and procured
 by he was to be given to him the said A. divers violent blows and strokes
 made to suffer with and by certain sticks and staves, upon and about his head
 very severe and other parts, and thereby there greatly hurt, bruiled, wounded,
 hardships, &c. and maimed him the said A. whereby he the said A. became and
 was for a long time sick and indisposed; and wherefore he the
 said M. with force and arms, at, &c. made another assault on the
 said A. and there again beat him, &c. and there imprisoned him,
 and kept and detained him so imprisoned for a long space of time,
 contrary to the laws of this realm, and against the will of the
 said A. and also wherefore he the said M. with force and arms in
 and aboard a certain ship or vessel, then being in parts beyond the
 seas, that is to say, at the island of St. H. to wit, at, &c. made
 another assault upon the said A. and there again beat, &c. and
 there by force and against the will of the said A. took and carried,
 and caused and procured him the said A. to be taken and carried
 away from and out of the said ship or vessel, and there in the said
 island against the will of him the said A. sold and disposed of him
 the said A. as and for a slave, and in that capacity from thenceforth
 to live and serve for the remainder of his life, and there in the
 said island against the will of the said A. left him the said A. in a
 state of slavery, servitude, and bondage, whereby and in conse-
 quence whereof he the said A. remained and continued, and was
 kept and continued in such state of slavery, servitude, and bondage
 in the said island for a long space of time, and during that time was
 made to endure and suffer, and did endure and suffer barbarous
 and inhuman treatment, and many cruel and severe punishments
 and tortures, and was nearly starved and famished for want of
 food

AND FALSE IMPRISONMENT.

food and other necessities of life, and was ultimately put to great trouble, inconvenience, and expence in liberating himself from such state of slavery, servitude, and bondage as aforesaid, and in procuring a passage from the aforesaid island to this kingdom; and also wherefore with force and arms, &c. he the said M. at, &c. made another assault on him the said A. and there again beat, bruise, &c. and caused and procured him to be again beat, &c. and there again imprisoned him and caused, &c. to be imprisoned and to be kept and detained so imprisoned for a long space of time, contrary to the laws of this realm and against the will of the said A. and also wherefore with force and arms, &c. he the said M. at, &c. made another assault on him the said A. and there again beat, &c. so that his life was thereby greatly dejected of and other wrongs to him the said A. there did, against the peace of our lord the king, and to the great damage of him the said A. and thereupon the said A. by P. M. his attorney, complains; for that the said Michael heretofore, to wit, on, &c. made an assault upon the said A. and then and there beat, &c. and then and there tied, &c. and caused, &c. to be tied, &c. to a certain cannon, and then and there kept and continued him so there tied and bound to the said cannon for a long space of time, to wit, for the space of twelve hours, and whilst he was so tied and bound, gave and struck, and caused and procured to be given to him the said A. divers violent blows and strokes with certain sticks and staves upon and about his back, posterior, and other parts, and thereby then and there greatly hurt, &c. him the said A. whereby he the said A. became and was for a long space of time, to wit, for the space of ten days then next following, sick and indisposed; and also for that he the said Michael afterwards, to wit, on, &c. with force and arms, &c. made another assault on him the said A. and then and there again beat, &c. and then and there imprisoned him and kept and detained him so there imprisoned for a long space of time, to wit, for the space of twelve hours, contrary to the laws of this realm, and against the will of the said A. and also for that he the said M. afterwards, to wit, on, &c. in and on board a certain ship or vessel then being in parts beyond the seas, that is to say, at the island of St. Helena, to wit, at, &c. with force and arms, &c. made another assault upon him the said A. and then and there again beat, &c. and then and there by force and against the will of the said A. took and carried and caused, &c. from and out of the said ship or vessel, and then and there in the said island against the will of him the said A. sold and disposed of him the said A. as and for a slave, and in that capacity from thenceforth for and during the remainder of his life, and then and there in the said island against the will of the said A. left him the said A. in a state of slavery, servitude, and bondage, whereby and in consequence whereof he the said A. remained and continued, and was kept and continued in such state of slavery, &c. in the said island for a long space of time, to wit, for the space of six years then next following, and during that time was made to endure and suffer, and did endure and

TRESPASS.—ASSAULT AND

suffer barbarous and inhuman treatment, and many cruel and severe punishments and tortures, and was nearly starved and famished for want of food and other necessities of life, and was ultimately put to great trouble, &c. to wit, to the expence of two hundred pounds in liberating himself from such state of slavery, servitude, and bondage as aforesaid, and in procuring a passage from the said island to this kingdom: And also for that he the said M. heretofore, to wit, on, &c. with force and arms made another assault against him the said A. and then and there again beat, &c. and caused, &c. and then and there again imprisoned him, and caused and procured him to be again imprisoned, and kept and detained to imprisonment for a long space of time, to wit, for the space of six years, contrary to the laws of this realm, and against the will of the said A.: And also for that he the said M. afterwards, to wit, on, &c. with force and arms, made another assault on him the said A. and then and there again beat, &c. so that his life was thereby then and there greatly dispaired of, and other wrongs to him the said A. then and there did, against the peace of our lord the king, and to the damage of the said A. of two thousand pounds; and therefore he brings his suit, &c.

V. LAWES.

Declaration against defendant for making an assault upon plaintiff (who was a mariner), whereby he became sick, and was prevented from returning on board his ship, he lost his wages, and was forced to lay out a sum of money in procuring a passage home in another ship, &c.

JAMES PERRY, late of, &c. mariner, was attached to answer John Davis in a plea; wherefore he the said James, in and on board a certain boat then being in parts beyond the seas, to wit, at the Mole, in the harbour of Cadiz, in the kingdom of Spain, that is to say, at London aforesaid, in the parish of St. Mary-le-Bow, in the ward of Cheap, with force and arms made an assault upon the said John, and then and there beat, bruised, wounded, and ill-treated him, and then and there with violence forced the said John into the stern sheets of the said boat, and kneeled and jumped with his knees upon the breast and other parts of the body of the said John, and gave and struck the said John many violent and grievous blows and strokes upon his head, face, breast, and other parts of his body, and with great force and violence beat, bruised, lacerated, wounded, and maimed the same; whereby and by reason of which said several premises, he the said John not only became sick, sore, and disordered, and so remained and continued for a long space of time, but was necessarily forced and obliged for his recovery and safety to quit and leave the said boat in which he was then about to return, and otherwise could have returned to a certain brig or vessel called the Fox, and then laying off the said harbour of Cadiz, and bound from thence on a certain voyage home to this country, and to take his passage home in another and different ship, whereby he not only lost and was deprived of his wages that were due, and that otherwise would have arisen and become due to him from his service on board the said brig as a mariner therein, in which capacity he the said John had been, and was then engaged to serve, but was forced and obliged

obliged to lay out and expend divers large sums of money in and for his passage home in and on board another or different ship as aforesaid, and in and about his cure of his aforesaid wounds and sickness so occasioned as aforesaid, and in and for his necessary maintenance and support; and also wherefore he the said James, at, &c. in, &c. with force and arms made another assault upon the said John, and there again beat, &c. him, and with great force and violence with his fist and knees again beat, &c. the said John, so that his life was thereby greatly despaired of, and there imprisoned him the said John, and kept and detained him so there imprisoned for a long space of time; and also wherefore he the said James, at, &c. in, &c. with force and arms made another assault, &c. and there again beat, &c. so that his life was thereby greatly despaired of, and there imprisoned him the said John, and other wrongs to the said John there did, against the peace of our lord the now king, and to the great damage of the said John, and thereupon the said John, by A. B. his attorney, complains; for that whereas the said John heretofore, to wit, on, &c. at, &c. in and on board a certain boat then being in parts beyond the seas, to wit, at, &c. with force and arms made an assault upon the said John, and then and there beat, &c. and gave and struck the said John many violent, &c. upon his head, &c. and with great force and violence with his fists and knees cut, bruised, and lacerated him the said John, whereby and by means of which said several premises, he the said John not only became sick, &c. and so remained and continued for a long space of time, to wit, from thence hitherto, but was also necessarily forced and obliged for his safety and recovery to quit and leave the said boat in which he was about to return, and otherwise could have returned to a certain brig or vessel then lying off the said harbour, and bound from thence on a certain voyage home to this country, and to take his passage home in another and different ship, whereby he not only lost and was deprived of his wages that were due, and that otherwise would have arisen and accrued to him from his service on board the said brig as a mariner or otherwise (in which capacity he the said John had been, and was then engaged to serve), but was forced and obliged to lay out and expend divers large sums of money, in the whole amounting to a large sum of money, to wit, the sum of twenty pounds in and for his passage home in and on board another ship as aforesaid, and in and about the cure of his aforesaid wounds and sickness to occasioned as aforesaid, and in and for his necessary maintenance and support, to wit, at, &c.; and also for that he the said James heretofore, to wit, on, &c. with force, &c. made, &c. and then and there again beat, &c. and gave and struck the said John many hard, &c. upon his head, &c. and with great force and violence with his fists and knees again beat, &c. said John, so that his life was then and there greatly despaired of; and also for that he the said James heretofore, to wit, on, &c. with force, &c. made, &c. and other wrongs to the said John did, against the peace of our lord the now king, and to the damage of the said John of pounds.

TRESPASS.—ADULTERY—ASSAULT

Declaration for
entering rooms,
debauching
plaintiff's wife,
and carrying her
away, &c.

LONDON, to wit. **J. W.** complains of **D. C.** being, &c.; for that the said defendant heretofore, to wit, on, &c. at, &c. with force and arms, broke and entered divers, to wit, three rooms and three apartments of the said plaintiff, wherein he the said plaintiff and his family dwelt, inhabited, and resided, part and parcel of a certain messuage there situate and being, and then and there made a great noise and disturbance in the said rooms and apartments, and staid and continued therein for a long space of time, to wit, for the space of two hours then next following, without the leave or licence, and against the will of the said plaintiff, and whilst he was in the said rooms and apartments, to wit, on, &c. at, &c. with force and arms, to wit, with swords, &c. made an assault on Sarah, the then and now wife of said plaintiff, and then and there debauched, deflowered, lay with, and carnally knew her the said Sarah, and then and there by force and violence took and carried away the said wife of the said plaintiff from his aforesaid dwelling to places to him the said plaintiff unknown, and kept and detained the said wife of the said plaintiff from his aforesaid dwelling-house for a long space of time, to wit, from thence hitherto, by means whereof the said plaintiff hath, for and during all that time, lost and been deprived of the company, comfort, and fellowship of his said wife in his domestic affairs and concerns, and his felicity therein hath been greatly interrupted and disturbed, to wit, at, &c.: And also for that the said defendant, on, &c. at, &c. with force and arms, to wit, with swords, &c. made, &c. on the said Sarah, the then, &c. and then and there again beat, &c. and then and there again debauched, &c. her the said S. whereby the said S. then and there became sick, sore, diseased, and disordered, and so continued for a long space of time, to wit, for the space of one month then next following; by means of which premises he the said plaintiff, for a long time, to wit, for and during all the time aforesaid, lost and was deprived of the comfort, &c. of his said wife in his domestic affairs and concerns, which he otherwise would and ought to have had and enjoyed, and the domestic felicity of said plaintiff was also, on occasion of the premises last aforesaid, greatly interrupted and disturbed, and the said defendant then and there did other wrongs to the said plaintiff, against the peace of our said lord the now king. Damage five hundred pounds.

2d Count.

Plaintiff obtained a verd. &c.

V. LAWES.

Declaration for
striking plaintiff
with a whip, and
spoiling his
clothes.

SHORE } **FOR** that he the said Cooper heretofore, to wit,
against } on, &c. at, &c. with force and arms, that is to say,
COOPER. } with sticks, &c. made an assault upon him the said
Shore, and then and there beat, &c. and then and there with a
certain whip which he the said Cooper then and there had and held,
gave and struck him the said Shore many great and grievous blows
and strokes, in, upon, and about his head and other parts, and then
and

and there greatly cut, lacerated, and ~~bruised~~ him the said Shore, whereby he the said Shore not only lost great quantities of blood which then and there issued and flowed from his wounds upon his clothes and wearing apparel, to wit, one coat, &c. whereby they were greatly daubed, damaged, and spoiled, but became sick, fever, and disordered, and so continued for a long space of time, to wit, for the space of one month then next following, whereby he was, during all that time, hindered and prevented from doing, following, and transacting his lawful affairs and business, and was obliged to lay out and expend a large sum of money, to wit, the sum of twenty pounds in and about the curing and healing himself of his aforesaid wounds and bruises, sickness and indisposition: And also ^{2d Count.} for that [a Count for assault and imprisonment]: And, &c. &c. ^{3d Count.} defendant tore, damaged, spoiled, and destroyed divers goods and chattels, to wit, one other coat, &c. of a large value, to wit, of, &c.: And also, &c. &c. [4th Count, common assault], and other ^{4th Count.} wrongs to him the said Shore then and there did, against the peace of our lord the now king, and to the damage of the said Shore of two hundred pounds; and therefore he brings his suit, &c. &c.

V. LAWES.

MIDDLESEX, to wit. William Suter complains of Thomas ^{Declaration} Hill, John Foster, James Putnam, and Thomas Freeman; for that ^{against defendant,} whereas the said defendants, with force and arms, on, &c. broke ^{for entering the} and entered the dwelling-house of the said plaintiff, situate, standing, and being at H. aforesaid, in the county aforesaid, and made ^{dwelling house} a great noise and disturbance therein, and staid and continued in ^{of plaintiff,} the said house without the leave or licence, and against the will of ^{beating him, and} the said plaintiff, making and continuing such their noise and disturbance therein for a long time, to wit, for the space of three days, and during all that time greatly disturbed and disquieted the said William in his quiet and peaceable possession thereof, and ejected, expelled, put out, and amoved for a long space of time, to wit, from thence continually until the issuing of the original writ of the said William: And also for that the said defendants, on, &c. at, &c. with force and arms, made an assault upon the said William, and then and there beat, bruised, wounded, and ill-treated him, so that his life was thereby greatly despaired of, and seized, took, and imprisoned him, and kept and detained him in prison there for a long space of time, to wit, for the space of three days then next following, without any reasonable or probable cause whatsoever, contrary to the laws and customs of this realm, and against the will of the said William: And also for that the said defendants, on, &c. with force and arms, at, &c. made another assault upon the said William, and again beat, bruised, wounded, and ill-treated him, so that his life was thereby greatly despaired of, and then and there did other wrongs, &c. to the great damage, &c. against the peace, &c.; whereupon the said plaintiff saith he is injured, and hath sustained damage to the value of five hundred pounds; and therefore he brings his suit, &c.

TRESPASS—PLEA—JUSTIFICATION UNDER

Plea, that defendant Hill obtained a judgment against plaintiff, and that the goods were taken in execution, and that as little noise as possible was made, &c.

First, not guilty: ~~and for~~ further plea in this behalf as to the breaking and entering the said dwelling-house in the said first Count of the said declaration mentioned, and in which, &c. and making a great noise and disturbance therein, and staying and continuing in the said house making and continuing such noise and disturbance for the space of time in the said first Count mentioned, disturbing and disquieting the said William in his quiet and peaceable possession thereof above supposed to have been committed by the said Thomas Hill, he the said Thomas Hill, by leave of the court here for this purpose first had and obtained, according to the form of the statute in such case made and provided, says, that the said William ought not to have or maintain his aforesaid action thereof against him; because he says, that he the said T. H. before the said time when, &c. in the said first Count of the said declaration mentioned, to wit, in Easter term, in the twenty-sixth year of the reign of our lord the now king, in the court of our said lord the now king, before Alexander lord Loughborough, and his companions, then his majesty's justices of the bench here, to wit, at, &c. by the consideration and judgment of the same court recovered against the said William twenty-three pounds for his damages which he had sustained, as well by reason of the not performing certain promises and undertakings then lately made by the said William to the said T. H. as for his costs and charges by him about his suit in that behalf expended, whereof the said William was convicted, as by the record and proceedings thereof still remaining in the said court of the bench aforesaid, to wit, at, &c. more fully appears: And the said T. H. in fact further saith, that after the aforesaid recovery, and before the said time when, &c. to wit, on, &c. he the said T. H. so having execution of and for the damages aforesaid sued and prosecuted out of the said court of our said lord the king of the bench aforesaid a certain writ of our said lord the king called, &c. directed to the sheriff, that he should cause to be levied of the goods and chattels in his bailiwick of the said William twenty-three pounds, which in the said court of our said lord the king, before his justices at Westminster, had been awarded to the said T. H. for his damages aforesaid, and that the said sheriff should have that money before the justices of our said lord the king at Westminster, on the morrow of the Holy Trinity, to render to the said T. H. for his said damages, whereof the said William was convicted, and that the said sheriff should have there that writ; which said writ afterwards, and before the said return thereof, and was also before the said time, on, &c. at, &c. delivered by the said T. H. to J. S. esquire and B. W. esquire, then and from thenceforth until at and after the said time when, &c. were sheriffs of the said county of Middlesex to be executed in due form of law: And the said T. H. further saith, before and at the said time when, &c. divers goods and chattels of the said William, liable to be taken in execution by the said sheriff under and by virtue of the said writ, were in the said dwelling-house in the said declaration mentioned, and in which, &c.; and that thereupon by virtue of the said writ, the said sheriff, for having execution

tion thereof, afterwards and before the return of the said writ, to wit, at the said time when, &c. peaceably and quietly entered into the said dwelling-house in the said declaration mentioned, and in which, &c. by the outer door thereof, the same door being then and there open, as it was lawful for him to do for the cause aforesaid, and in so doing the said sheriff did necessarily make a little noise and disturbance in the said house, and did also, for the purpose aforesaid, necessarily and unavoidably stay and continue in the said house, making and continuing such last-mentioned noise and disturbance therein for the said time in the said declaration in that respect mentioned, and did during that time, by means of the premises, a little disturb and disquiet the said William in his quiet and peaceable possession thereof, doing as little damage as he possibly could on that occasion, which are the same, &c.; wherefore, &c. if, &c.

NASH GROSE.

And the said William, as to the said plea of the said T. H. by him lastly above pleaded in bar, as to the breaking and entering the said dwelling-house in the said first Count of the said declaration mentioned, and in which, &c. and making a great noise and disturbance therein, and staying and continuing in the said house, making and continuing such noise and disturbance therein for the said space of time in the said first Count mentioned, and disturbing and disquieting the said William in his quiet and peaceable possession thereof above done by the said T. H. says, that he the said William, by reason of anything in that plea contained, ought not to be barred from having and maintaining his aforesaid action thereof against him; because he saith, that the said trespasses committed and done by the said T. H. in breaking and entering the said dwelling-house in the said first Count of the said declaration mentioned, in which, &c. and making a great noise and disturbance therein, and staying and continuing in the said house, making and continuing such noise and disturbance therein for the said space of time in the said first Count mentioned, and disturbing and disquieting the said William in his quiet and peaceable possession thereof, whereof amongst the several other trespasses aforesaid the said William above complained, and for which, &c. the said other trespasses he hath sued out his original writ against the said T. H. and the said John James and Thomas Freeman were done and committed by him the said T. H. otherwise and at another time and on other occasions, and for other purposes than those in the same plea of the said T. H. in that behalf above mentioned, and are other and different trespasses than the trespasses of the same plea of the said T. H. confessed to have been done; and this he is ready to verify; wherefore the said T. H. has not answered the said trespasses hereinbefore mentioned assigned, the said William prays judgment and his damages, by reason of the committing the same trespasses, to be adjudged to him, &c.

THOMAS WALKER.

PLEA TO NEW ASSIGNMENT—REPLICATION—LICENCE.

Plea to new assignment, 1st. not guilty; 2d. leave and licence

And the said T. H. as to the several supposed trespasses above newly assigned, saith, that he is nowise guilty thereof in manner and form as the said William hath above in that behalf alledged; and of this he the said P. H. puts himself upon the country, and the said William doth the like: And for a further plea in this behalf as to the said several supposed trespasses above newly assigned, the said T. H. by leave of the court here for this purpose first had and obtained, according to the form of the statute in such case made and provided, saith, that the said William ought not to have his aforesaid action thereof maintained against him; because he saith, that he the said T. H. at the said time when, &c. above newly assigned, by leave and licence to the said William to him for that purpose first given and granted, committed the said several trespasses above newly assigned as he lawfully might for the cause last aforesaid; and thus he the said J. H. is ready to verify; wherefore he prays judgment if the said William ought to have his aforesaid action thereof maintained against him, &c. NASH GROSE.

Replication, that he did not give leave and licence,

And the said William, as to the said plea of the said T. H. by him lastly above pleaded in bar to the said trespasses above newly assigned, says, that he, by reason of any thing in the said last-mentioned plea of the said T. H. contained, ought not to be barred from having and maintaining his aforesaid action against him; because he says, that he the said William did not give and grant any such leave and licence to the said T. H. as the said T. H. hath in his said last-mentioned plea above alledged; and thus he the said William prays may be enquired of by the country, &c.; and the said T. H. doth the like, &c. S. LAWRENCE.

Plea (to a declaration in trespass for entering plaintiff's house, making a noise, assaulting him, detaining him, and expelling him); 1st, not guilty.

2d Plea, that A. and C. his wife, in right of his wife, were ousted of the said house in which, &c. and demised same to one of the defendants, by means of which he entered, giving colour

therein under a pretended demise made to plaintiff by A. B. and C. that the defendant in his own right and the other defendants, as his servants, entered the house, made a noise, disturbed and expelled the plaintiff from the possession of the house, as they lawfully might.

and

and James, they the said John and James, by (1) leave of the court here for this purpose first had and obtained, according to the form of the statute in such case made and provided, say, that the said William ought not to have his aforesaid action thereof maintained against them; because they say, that (2) *before and at the time of making the demise hereafter mentioned, H. B. and Sarah his wife, in right of the said Sarah, were seised in their demesne as of fee of and in the said dwelling-house in the said declaration mentioned, and in which, &c. with the appurtenances; and being so thereof seised, they the said H. B. and Sarah his wife, before the said time, &c. in the said first Count mentioned, to wit, on, &c. at, &c. by a certain indenture then and there made between the said H. B. and Sarah his wife of the one part, and the said John of the other (one part of which said last-mentioned indenture, sealed with the seal of the said H. B. and Sarah his wife, they the said John and James now bring into court here, the date whereof is the same day and year last aforesaid) demised the said dwelling-house in which, &c. with the appurtenances, to the said John, to hold the same unto the said John, his executors, administrators, and assigns, from, &c. for and during, and unto the full end and term of twenty-one years from thence next ensuing, and fully to be complete and ended; by virtue of which said demise the said John afterwards, and before the said time when, &c. to wit, on, &c. entered into the said dwelling-house in which, &c. with the appurtenances, and became and was possessed thereof for the said term so to him thereof demised as aforesaid; and being so thereof possessed, the said William claiming title to the said dwelling-house in which, &c. with the appurtenances, under colour of a certain charter of demise pretended to be thereof made to him by the said H. B. and Sarah his wife, for the term of his natural life, before the making of the said demise to the said John, whereas nothing passed by that charter of demise into the possession of the said William, before the said time when, &c. and during the continuance of the said term so demised to the said John as aforesaid, entered into the said dwelling-house in which, &c. with the appurtenances, and was possessed thereof, upon whose possession the said John, in his own right, and the said James, as the servant of the said John, and by his command at the same time when, &c. re-entered into the said dwelling-house in which, &c. as being the dwelling-house of the said John, and made a noise and disturbance therein, and staid and continued in the said house making and continuing such noise and disturbance therein for the said space of time in the said first Count of the said declaration in that behalf mentioned, and disturbed and disquieted the said William in his possession thereof, and ejected, expelled, put out, and amoved the said William from the possession and occupation of the said dwelling-house, as being the dwelling-house of the said John, and kept and continued him so thereout ejected, expelled, put out, and amoved for the said space of time in the said first Count of the said declaration in that behalf mentioned, as they lawfully might for the cause aforesaid, which are the*

(1) "like"

(2) "they the said John and James, at the said time when, &c. in the said first Count mentioned, at, &c. by the leave and licence of the said William to them for that purpose first given and granted, broke and entered into the said dwelling-house in the said first Count of the said declaration mentioned, and in which, &c."

PLEA—LICENCE—AND MOLLITER MANUS IMPOSUIT

the same, and breaking the said dwelling house in the said first Count of the said declaration mentioned, and making a noise and disturbance therein, and staying and continuing in the said dwelling-house, and making such noise and disturbance therein for the said space of time in the said first Count mentioned, and disturbing and disquieting the said William in his possession thereof, and ejecting, expelling, putting out, and amoving the said William from the possession and occupation of his said dwelling-house, and keeping and continuing him so thereout expelled, ejected, put out, and amoved for the said space of time in the said first Count also mentioned, whereof the said William hath above complained against them the said John and James; and this they the said John and James are ready to verify; wherefore they pray judgment if the said William ought to have his aforesaid action thereof maintained against them, &c. : And for further plea in this behalf, as to the breaking and entering the said dwelling-house in the said first Count of the said declaration mentioned, and in which, &c. and making a noise and disturbance therein, and staying and continuing in the said house making and continuing such noise and disturbance therein for the said space of time in the said first Count mentioned, and disturbing and disquieting the said William in his possession thereof, and ejecting, expelling, putting out, and amoving the said William from the possession and occupation of his said dwelling-house, and continuing him so thereout ejected, expelled, put out, and amoved for the said space of time, &c. &c. [Go on same as the last, omitting what is in *Italic*, and inserting what is in the margin] : And for a further plea in this behalf as to the assaulting and ill-treating the said William in the second Count of the said declaration mentioned above, supposed to have been committed by the said James, he the said James, by like leave of the court here for this purpose first had and obtained, according to the form of the statute, &c. says, that the said William ought not to have his aforesaid action thereof maintained against him; because he saith, that he the said James, before and at the time when, &c. in the said second Count of the said declaration mentioned, was lawfully possessed of a certain messuage or dwelling-house, with the appurtenances, situate, &c. at, &c. and being so thereof possessed, the said William, just before the said time when, &c. to wit, on, &c. in the said second Count of the said declaration mentioned, unlawfully entered into the said messuage or dwelling-house, and then and there made a great noise and disturbance therein, and thereby then and there greatly disturbed and disquieted the said James in the peaceable and quiet possession, use, and occupation of his said messuage or dwelling house, whereupon he the said James then and there requested the said William to cease his said noise and disturbance, and go and depart from and out of the said messuage or dwelling-house, to do which he the said William then and there wholly refused, and stayed and continued in the said messuage or dwelling-house, making and continuing such his noise and disturbance therein, whereupon the said James, at
the

3d Plea, leave
and licence.

4th Plea, as to
assaulting the
plaintiff, that
plaintiff was
making a noise
and disturbance
in the house,
wherefore de-
fendants *molliter manus im-*
posuit, in or-
der to remove
him out of the
house.

the said time when, &c. gently laid his hands upon the said William, in order to remove, and did then and there gently remove the said William from and out of the said messuage or dwelling-house, as he lawfully might do for the cause aforesaid, which are the same assaulting and ill-treating the said William in the said second Count of the said declaration mentioned, whereof the said William hath above complained against him the said James, and this he is ready to verify; wherefore he prays, &c. : And for a further plea in this behalf as to the seizing, taking, and imprisoning the said William, and keeping and detaining him in prison for the space of twenty-four hours, part of the said time in the said second Count mentioned above, supposed to have been committed by the said John and James, they the said John and James, by like leave of the court here for this purpose first had and obtained, according to the form of the statute, &c. say, that the said William ought not to have his aforesaid action thereof maintained against them; because they say, that the said William, just before the said time when, &c. in the said second Count of the said declaration mentioned, had unlawfully entered a certain other messuage or dwelling-house, with the appurtenances, situate, &c. at, &c. and made a great noise, disturbance, and affray therein, and was then making a great noise, disturbance, and affray at and about the door of the said last mentioned dwelling-house, in breach of the peace of our lord the now king, whereupon they the said John and James being then and there present for the preservation of the peace of our said lord the now king, and in order to put a stop to the said last-mentioned noise, disturbance, and affray, then and there gave charge of the said William to the said Thomas Freeman, then and there being a constable and a peace officer of our said lord the now king, and did then and there request the said T. F. so being such constable and peace officer as aforesaid, to take the said William into his custody, and to secure and safely keep him until he could be carried and conveyed before some one of the justices assigned to keep the peace of our said lord the now king in and for the said county of Middlesex, then and there to answer the premises, and to be examined and dealt with according to law for the aforesaid breach of the peace, and on that occasion they the said John and James, in aid and assistance of the said T. F. so being such constable and peace officer as aforesaid, and by his command did then and there, to wit, at the said time when, &c. at, &c. gently lay their hands on the said William in order to take, and did then and there take him the said William in custody for the purpose aforesaid; but because it was then Sunday, and late in the evening, so that the said William could not be immediately carried and conveyed before any of the justices aforesaid, he the said William was necessarily detained in the custody of the said T. F. so being such constable and peace officer as aforesaid, until the next day, and that then and soon as conveniently could be, he the said William was carried and conveyed by the said T. F. so being such constable and peace officer as aforesaid, before

5th Plea, as to the imprisoning the plaintiff, that plaintiff was making a great noise, and that the defendant, for the preservation of the peace, charged a constable with the plaintiff, that he might be carried before a justice of the peace; and because it was Sunday, plaintiff was necessarily detained in custody, and as to the assault, that defendants in aid of the constable mollior manus impulerunt.

TRESPASS.—REPLICATION—DE INJURIA, &c.

before W. B. esquire, then and still being one of the justices assigned to keep the peace of our said lord the now king in and for the county of Middlesex aforesaid, then and there to answer the premises, and to be examined and dealt with according to law for the breach of the peace: And the said John and James in fact say, that by means of the said several premises aforesaid the said William was necessarily imprisoned, and kept and detained in prison for the space of twenty-four hours, part of the said time in the said second Count of the said declaration mentioned, as was lawful and just for the cause aforesaid, which are the same seizing, taking, and imprisoning the said William, and keeping and detaining him in prison for the space of twenty-four hours, part of the said time in the said second Count of the said declaration mentioned, whereof the said William hath above complained against the said John and James; and this they the said John and James are ready to verify; whereupon they pray judgment it, &c. &c.

J. C. BOLTON.

Replication, that after defendant became possessed of the house in which, &c. he demised same to plaintiff, and that before the end of the demise, the defendants de injuria, &c. broke and entered and made a noise, and expelled the plaintiff.

And the said William, as to the said plea of the said John and James by them secondly above pleaded in bar as to the breaking and entering the said dwelling house in the said first Count of the said declaration mentioned, and making a noise and disturbance therein, for the said space of time in the said first Count mentioned, and disturbing and disquieting the said William in his possession thereof, and ejecting, expelling, putting out, and removing the said William from the possession and occupation of his said dwelling-house, and keeping and continuing him so thereout ejected, expelled, put out, and removed for the space of time in the said first Count also mentioned, above done by the said John and James, says, that he the said William by reason of any thing in that plea contained ought not to be barred from having and maintaining his aforesaid action thereof against him; because he says, that the said John, after he the said John entered and became possessed of the said dwelling-house in which, &c. as in that plea mentioned, and long before the said time when, &c. to wit, on, &c. at, &c. did demise the said dwelling-house in the said declaration mentioned, in which, &c. with the appurtenances, to have and to hold the same unto the said William from, &c. for the term of one year then next following, and so from year to year for so long a time as it should please the said John and the said William; by virtue of which said demise the said William afterwards, and before the said time when, &c. to wit, on, &c. at, &c. entered into the said dwelling-house, with the appurtenances, and became, and until, and at, and after the said time when, &c. was possessed thereof; and the said William being so possessed thereof, the said John and James of their own wrong, at the said time when, &c. the same being before the expiration of the said demise to the said William, broke and entered the said dwelling-house in the said first Count of the said declaration mentioned, in which, &c. and made

made a noise and disturbance therein, and stayed and continued therein making and continuing such their noise and disturbance therein for the said space of time in the said first Count mentioned, and disturbed the said William in the possession thereof, and ejected, expelled, put out, and amoved the said William from the possession and occupation of his said dwelling-house, and kept and continued him so thereout ejected, expelled, put out, and amoved for the said space of time in the said first Count mentioned, as the said William has above thereof complained against them; and this he is ready to verify; wherefore since the said John and James have above acknowledged the committing of those trespasses the said William prays judgment and his damages by reason thereof to be adjudged to him, &c.: And as to the said plea of the said John and James by them thirdly above pleaded in bar as to the breaking, entering the said dwelling-house in the said first Count of the said declaration mentioned, in which, &c. and making a noise and disturbance therein, and staying and continuing in the said dwelling-house making and continuing such noise and disturbance therein for the said space of time in the said first Count mentioned, and disturbing and disquieting the said William in his possession thereof, and ejecting, expelling, putting out, and amoving the said William from the possession and occupation of his said dwelling-house, and keeping and continuing him so thereout ejected, expelled, put out, and amoved for the said space of time in the said first Count mentioned, above done by the said John and James, he the said William saith that he by reason of any thing in that plea contained ought not to be barred from having and maintaining his aforesaid action thereof against them; because he says, that he the said William did not give and grant any such leave and licence to the said John and James, as the said John and James have in that plea alleged; and this he prays may be enquired of by the country, and so forth: And as to the said plea of the said James by him fourthly above pleaded in bar as to the assaulting and ill treating the said William in the second Count of the said declaration mentioned, above done by the said James, the said William says, that he by reason of any thing in that plea of the said James contained ought not to be barred from having and maintaining his aforesaid action thereof against him; because he says, that he the said James of his own wrong, and without any such cause as by the said James is in that plea alleged, at the said time when, &c. assaulted and ill treated the said William in manner and form as the said William in the said second Count of the declaration has above thereof complained against him; and this he the said William also prays may be enquired of by the country, &c.: And as to the said plea of the said John and James by them lastly above pleaded in bar as to the seizing, taking, and imprisoning the said William, and keeping and detaining him in prison for the space of twenty-four hours, part of the said time in the said second Count mentioned, above done by the said John and James, he the said William says, that he ought not by reason of any thing in the said plea contained

To the 3d plea, the plaintiff did not give the defendants leave and licence.

To the 4th plea, as to the assaulting the plaintiff, that defendants *de injuria, &c.*

To the 5th plea, as to imprisoning the plaintiff, that defendants *de injuria, &c.*

TRESPASS—REJOINDER—SURREJOINDER:

to be barred from having and maintaining his aforesaid action thereof against them; because he says, that they the said John and James of their own wrong, and without any such cause as the said John and James have in that plea above alledged, at the time when, &c. seized, took, and imprisoned him the said William, and kept and detained him in prison for the space of twenty-four hours, part of the said time in the said second Count mentioned, in manner and form as he the said William hath above thereof complained against them; and this he also prays may be enquired of by the country, &c. &c.

THOMAS WALKER.

Rejoinder, admitting the demerit from the defendant to the plaintiff, but that the same was duly ended, and issue as to the rest of the replication.

And the said John and James, as to the said plea of the said William by him above pleaded by way of reply to the said plea of the said John and James by them secondly above pleaded in bar as to the several supposed trespasses in the introductory part of that plea mentioned, say as before, that the said William by reason of any thing in his said plea so pleaded by way of reply above alledged ought not to have his aforesaid action thereof maintained against them; because admitting it to be true that the said John did demise the said dwelling-house in the said declaration mentioned, in which, &c. with the appurtenances, to the said William in manner and form as the said William hath above in his said plea so pleaded by way of reply in that behalf alledged, for rejoinder in this behalf the said John and James say, that afterwards, and before the said time when, &c. to wit, on, &c. the said demise became and was duly ended and determined, to wit, at, &c.; and this they the said John and James are ready to verify; wherefore they pray judgment if the aforesaid William ought to have his aforesaid action thereof maintained against them, &c.: And as to the said plea of the said William above by him pleaded by way of reply to the said plea of the said John and James by them thirdly above pleaded in bar as to the several supposed trespasses in the introductory part of that plea mentioned, and which he the said William hath prayed may be enquired of by the country, they the said John and James do the like: And as to the said plea of the said William by him above pleaded by way of reply to the said plea of the said John and James by them fourthly above pleaded in bar, as to the said several supposed trespasses in the introductory part of that plea mentioned, which he the said William hath also prayed may be enquired of by the country, they the said John and James do the like: And as to the said plea of the said William by him above pleaded by way of reply to the said plea of the said John and James by them lastly above pleaded in bar as to the several supposed trespasses in the introductory part of that plea mentioned, and which he the said William hath also prayed may be enquired of by the country, they the said John and James do the like.

J. C. BOLTON.

And

And the said William, as to the said plea of the said John and James by them above pleaded by way of rejoinder to the said plea of the said William by him pleaded by way of reply to the said plea of the said John and James, by them secondly above pleaded in bar as to the several trespasses in the introductory part of that plea mentioned, says, that the said demise did not become and was not duly ended and determined in manner and form as the said John and James have above alledged; and this he prays may be enquired of by the country, &c. and the said John and James do the like, &c.

Surjoinder,
that the demise
was not duly
ended.

S. LAWRENCE.

Common Pleas, Michaelmas Term, 27. Geo. III.

LONDON, to wit. George Pasmore, late of London, mariner, was attached to answer Robert Vessey in a plea; wherefore the said George, at, &c. with force and arms made an assault upon the said Robert, and there beat, bruised, wounded, and ill treated him, and there laid hold of and forcibly pulled and hauled the said Robert about by the nose, and there made use of and uttered many dreadful threats and menaces of bodily hurt and injury towards the said Robert; whereby he the said Robert was greatly terrified, affrighted, and alarmed, and for a long time suffered and underwent great pain and anxiety both of body and mind: And also wherefore he the said George with force and arms, at, &c. made another assault on the said Robert and there again beat, &c. him, and forcibly fell upon, and seized, and laid hold of the said Robert, and dragged and hauled him about, and there again menaced and there abused him with bodily hurt and injury; whereby he suffered and underwent further pain and anxiety of mind and body: And also wherefore with force and arms he the said George, at, &c. made another assault upon the said Robert, and there again beat, &c. him, and there knocked, pushed, and struck the said Robert down; and the said Robert being so down, there did violently kick, bruise, drag, wound, and otherwise ill treat him; and also wherefore he the said George afterwards, in and on board a certain brig called the London, then being in parts beyond the seas, to wit, at, &c. and in which said ship or vessel he the said Robert there served, that is to say, at, &c. with force and arms made another assault upon the said Robert, and there again beat, &c. him, and there with a certain slave which he there had and held, and with his fist gave and struck the said Robert many violent and grievous blows or strokes upon his head and breast and other parts, and there again laid hold of the said Robert, and pulled, dragged, and hauled him about with great force and violence, and greatly cut, bruised, lacerated, wounded, and maimed him, and made use of and uttered many other dreadful threats and menaces of bodily hurt and injury towards the said Robert; whereby and by reason of which said several premises he the said Robert not only became sick, sore, and disordered, and to remained and continued for a long space of time, but was necessarily forced and obliged for his self-

Declaration, several common Counts for assaulting, knocking down plaintiff, and rendering him unable to serve aboard his ship, whereby he was forced to quit and return home in another.

This is the writ part of it.

TRESPASS. -ASSAULT—FALSE IMPRISONMENT.

self-preservation and safety to quit and leave the said brig in which he so served as aforesaid, and in which he was about to return, and could otherwise have returned home to England, and to take his passage home in another and different ship; whereby he not only lost and was deprived of all wages due, and that would otherwise have arisen to him from his continuance on board the said brig, but was forced and obliged to lay out and expend a large sum of money in and for his passage home in such other ship as aforesaid, and in and about his cure of his aforesaid indisposition occasioned as aforesaid: And also wherefore he the said George afterwards, at, &c. with force and arms made another assault upon the said Robert and there again beat, &c. him, so that his life was thereby in great danger: And also wherefore with force and arms he the said George afterwards, at, &c. rent, tore, damaged, and spoiled the said goods and chattels of the said Robert there then found, and being of a large value: And also wherefore with force and arms he the said George afterwards, at, &c. seized and took other the goods and chattels of the said Robert there then found, and being of a large value, and kept and detained the same for a long space of time; whereby he the said Robert during all that time lost and was deprived of the use and benefit of his said last-mentioned goods and chattels: And also wherefore he the said George afterwards, at, &c. seized other the goods and chattels of the said Robert there then found, and being of a large value, and carried away the same, and converted and disposed thereof to his own use, and other wrongs to the said Robert there did, to the great damage of the said Robert, and against the peace of our lord the now king, his crown and dignity; whereupon the said Robert, by R. L. his attorney, complains, for that the said George heretofore, to wit, on, &c. at, &c. with force and arms, to wit, with swords, &c. &c. &c. &c.

V. LAWES.

Common Pleas, Michaelmas Term, 27. Geo. III.

Declaration, several common Counts for assault, imprisonment, and knocking down plaintiff, whereby he became sick.

This is the whole part of it.

M. M. L. S. E. X, to wit. Thomas Armstrong, late of, &c. and Robert Larman, late of, &c. were attached to answer Frederick Brown in a plea; wherefore they the said Thomas and Robert at, &c. with force and arms made an assault upon the said Frederick, and there bruised, wounded, and ill treated him, and there tied and lashed together the hands and legs of the said Frederick, and kept and continued the same so tied and lashed together for a long space of time, and thereby during all that time deprived the said Frederick of and restrained him in and from the use and exercise of his personal liberty, and also there forcibly and against his will dragged, pulled, hauled, and carried, and caused and procured him the said Frederick to be dragged, &c. about from place to place, and with a certain large stick there gave and struck the said Frederick many violent and grievous blows and strokes upon his head, back, &c. and thereby were greatly cut, bruised, wounded, lacerated, and maimed him the said Frederick; whereby and by reason

TRESPASS.—ASSAULT.

reason of which said several premises, he the said Frederick then and there and for a long time afterwards suffered and underwent great pains and anguish, and became sick, sore, lame, disordered, and incapable of doing his business, and so remained and continued for a long space of time; and also wherefore they the said Thomas and Robert at, &c. with force and arms made another assault upon the said Frederick, and there again beat, &c. him and there imprisoned him, and kept and detained him so there imprisoned for a long space of time without any lawful or just and reasonable cause, contrary to the laws and custom of this realm, and against the will of the said Frederick: and also wherefore they the said Thomas and Robert at, &c. with force and arms, made another assault upon the said Frederick, and there again beat, &c. him, and there with great force and violence knocked and struck him down, and whilst he was so down, and before and afterwards, and with a certain poker and otherwise gave and struck him divers other violent blows and strokes, and also there kicked and otherwise ill treated him the said Frederick, and dragged, hauled, and pulled him about by the hair of his head, whereby he suffered and endured further pain and anguish, and became and was again disordered and indisposed; and also wherefore they the said Thomas and Robert with force and arms at W. aforesaid, in the county aforesaid, made another assault upon the said Frederick and there again beat, &c. him so that his life was greatly despaired of, and other wrongs to the said Frederick there did to the great damage of the said Frederick, and against the peace of our lord the now king, his crown and dignity, &c. &c.

V. LAWES.

Thomas Dawson late of, &c. was attached to answer Stephen Robson in a plea; wherefore he the said Thomas with force and arms, &c. at, &c. in, &c. made an assault on him the said Stephen and there beat, bruised, wounded, and ill treated him, and there seized and laid hold of the said Stephen by the collar, and there with his fists and otherwise gave and struck the said Stephen many violent and grievous blows and strokes upon his head, face, breast, and other parts of his body, and then pulled, dragged, and hauled him over a certain wall with great force and violence, and there made use of and uttered many horrid and dreadful imprecations, threats, and menaces, and many reproachful and opprobrious epithets and scurrilous expressions of and against him the said Stephen, whereby and by reason of which said several premises the said Stephen became sick, sore, and disordered, and so remained and continued for a long space of time then next following, and by reason of such ill usage of him the said Stephen, and from a mistaken idea of his having merited the same, certain then tenants of and to him the said Stephen of certain messuages and premises of him the said Stephen, situate in the parish of, &c. in, &c. who were present at such ill usage left and quitted the said premises so by them respectively holden as aforesaid, without paying him

Declaration
against defend-
ant for making
an assault on
plaintiff where-
by he lost sever-
al of his tenants
who lived in his
houses, and who
thought plaintiff
had merited the
treatment given
him by defend-
ant, dragging
him over a wall,
tearing his
clothes, &c.

V. LAWES.

fields,

DEFENCE OF PROPERTY—SON ASSAULT DEMESNE.

fields, in the parish of, &c. in the county of, &c. and of a certain brick wall then and there standing and being in the said close of the said Thomas; and the said Thomas being so possessed of the said close and of the said brick wall as aforesaid, the said Stephen at the said time when, &c. with force and arms wrongfully and against the will of the said Stephen took down, pulled down, and destroyed the said wall of the said Thomas, and was taking down, pulling down, and destroying the said wall of the said Thomas, and taking and carrying away the bricks and other materials thereof; whereupon the said Thomas then and there requested the said Stephen to forbear and desist from any farther taking down and destroying the said wall of the said Thomas, and taking and carrying away the bricks and other materials thereof; but the said Stephen then and there refused to forbear or desist therefrom, and then and there continued so taking down, pulling down, and destroying the said wall of the said Thomas, and taking, &c. the bricks and other materials thereof; whereupon the said Thomas at the said time when, &c. there gently laid his hands upon the said Stephen, and gently laid hold of the said Stephen by the collar in order to prevent and hinder him from taking down, pulling down, and destroying the said wall of the said Thomas, and taking and carrying away the bricks and other materials thereof as it was lawful for him the said Thomas to do, which is the same assaulting, &c. in the said first Count of the said declaration mentioned; without this that the said Thomas is guilty of assaulting, &c. at, &c. or elsewhere than in the said close of the said Thomas, called, &c. situate, &c. near Moorfields, in the parish of, &c. in, &c. and this, &c. wherefore, &c. if, &c.: *And* the said Thomas for further plea in this behalf as to the assaulting, &c. and seizing, &c. in the said first Count of the said declaration mentioned by like leave of, &c. according, &c. says, *ad fin non*; because he says, that he the said Thomas before and at the said time when, &c. was possessed of a certain other close called, &c. situate, &c. in, &c. and of a certain other brick wall then and there standing, &c. of the said Thomas; and the said Thomas being so possessed of the said last-mentioned close and of the said last-mentioned brick wall, he the said Stephen at the said time when, &c. with force and arms, &c. wrongfully and against the will of the said Thomas, was taking down, &c. whereupon the said Thomas then and there requested the said Stephen to forbear, &c. of the said Thomas; but the said Stephen then and there wholly refused to forbear, &c. and then and there continued, &c. to take down, &c. whereupon the said Thomas at the said time when, &c. gently, &c. as it was lawful for him the said Thomas to do; and the said Thomas further says, that after his laying his hands upon the said Stephen in manner aforesaid, and for the cause aforesaid, the said Stephen then and there made an assault on the said Thomas, and would have then and there beat, &c. the said Thomas if he the said Thomas had not then and there defended himself

3d Plea, the
after having
been required
desist from pull-
ing down the
wall, plaintiff
made an assault
on defendant
whereupon
defended him-
self.

TRESPASS to PERSONAL PROPERTY—

himself against the said Stephen, whereupon the said Thomas did then and there defend himself against the said Stephen; and the said Thomas further says, that if any damage or hurt then and there happened to the said Stephen, the same happened to him on occasion of his assaulting the said Thomas and in defence of the said Thomas; without this that the said Thomas is guilty of the said assaulting, &c. and seizing, &c. at, &c. in, &c. or elsewhere than in the last-mentioned close called, &c. and being near, &c. in, &c.; and this, &c.; wherefore, &c. if, &c. GEORGE BOND.

II. To PERSONS AND PERSONAL PROPERTY.

Common Pleas. Easter Term, 25. Geo. III.

Declaration for
seizing plaintiff's
goods, and de-
staining them and
converting them
to defendant's
use.

MIDDLESEX, to wit. J. J. late of, &c. N. O. (sued by the name of P. O.) late, &c. W. V. late of, &c. G. S. late of, &c. M. H. late of, &c. and R. M. late of, &c. were attacked to answer J. A. in a plea; wherefore with force and arms, &c. at K. in the county of M. aforesaid, they seized, took, and detained the goods and chattels of the said Joseph there then found, and being of a large value, and carried the same away, and converted and disposed thereof to their own use, and other wrongs to the said Joseph there did, against the peace of our lord the now king, and to the great damage of the said Joseph; and thereupon the said Joseph, by J. M. his attorney, complains, for that the said J. M. W. J. G. M. and R. heretofore, to wit, on, &c. with force and arms, &c. seized, took, and detained the goods and chattels, to wit, three butts of beer, &c. &c. &c. of the said Joseph then and there found, and being of a large value, to wit, of the value of forty pounds, &c. and carried away the same, and converted and disposed thereof to their own use, and other wrongs to the said Joseph then and there did, against the peace of our lord the now king, and to the damage of the said Joseph of fifty pounds, for which he brings suit, &c.

Plea by two de-
fendants *non cul.*

And the said Matthew, by A. B. his attorney, comes and defends the wrong and injury. when, &c. and says he is not guilty of the premises above laid to his charge, in manner and form as the said Joseph hath above complained against him; and of this he puts himself upon the country, &c.; and the said J. J. doth the like, &c. [The like plea by the defendant R. M. by A. B. his attorney, and issue thereon.]

Declaration for
entering defend-
ant's house, seiz-
ing his dog,
dragging it away,
and hanging it.

FOR that the said defendant, on, &c. with force and arms, &c. broke and entered the house of the said plaintiff at B. in the said county of K. and there staid and continued for a long space of time, to wit, for the space of twenty hours then next following, against

against the said will of the said R. and then and there during all that time made a great noise, tumult, riot, and affray in the said house, and disturbed and disquieted the said R. and his family in the peaceable and quiet possession and occupation of his said house, and then and there seized, took, and forcibly carried and dragged away a certain dog of the said R. there then found, and being of the price of ten pounds of lawful money of Great Britain, and then and there, with a certain cord, hung up and suspended the said dog by his neck for a long space of time, to wit, for the space of one hour, and thereby hanged, choked, strangled, and killed the said dog: And also for that the said defendant, on the same day and year aforesaid, at B. aforesaid, with force and arms, &c. seized, took, led, and carried away a certain other dog of the said R. of the price of ten pounds there then found, and hung up and suspended the said last-mentioned dog by his neck for a long time, to wit, for the space of one hour, and thereby hanged, choked, strangled, and killed the said last-mentioned dog, and other wrongs, &c. Damages.

ad Count, for
seizing and hanging
dog only.

Drawn by MR. WARREN.

MIDDLESEX, to wit. Robert Gillow, late of, &c. cabinet maker, was attached to answer William Wheeler in a plea; wherefore with force and arms, &c. at the parish, &c. he broke and entered the messuage or dwelling-house of the said William there situate and being, and made a great noise, disturbance, and affray therein, and there seized and took possession of the goods and chattels of the said William of a large value, and remained and continued in such possession thereof, and in the said messuage or dwelling-house for a long time, and until he the said William was forced and obliged at a considerable trouble, inconvenience, and expence to replevy the same; and also with force and arms, &c. he the said Robert, at, &c. broke and entered a certain close of the said William there situate and being, and expelled, put out, and amoved him, and kept and continued him so expelled out and amoved from the possession and occupation thereof for a long space of time, whereby he the said William not only during all that time lost and was deprived of the use of his said close, but was hindered and prevented from following and exercising his business of a sawyer therein: And also wherefore the said Robert, with force and arms, &c. at, &c. seized and took divers other goods and chattels, and also the necessary working tools of the said William in his trade and business there then found, and being of a large value, and kept and detained the same for a long time, whereby the said William, for and during all that time, lost and was deprived of the use, benefit, and advantage of his said last-mentioned goods and chattels and working tools, and was forced and obliged to lay out and expend a large sum of money in and about recovering his said last-mentioned goods and chattels; and for and by reason of the want of his said working tools was hindered and prevented from following and ex-

Declaration for
breaking into
plaintiff's house,
and making an
affray therein,
seizing his goods,
and detaining
them till replev-
ied.

ad Count, for
breaking his
close, turning
him out of pos-
session; per quo,
plaintiff was pre-
vented from fol-
lowing his busi-
ness.

TRESPASS TO PERSONS (AND DWELLING-HOUSE)—TO PROPERTY.

lord the now king, and to the damage of the said William of two thousand pounds; and therefore he brings suit, &c. V. LAWES.

Tuesday next after fifteen days of the said day of St. Martin, in Michaelmas Term, in the sixteenth year of king George the Third.

Declaration, in
ing plaintiff's
house, making
an affray there-
in, assaulting his
wife big with
child, and beat-
ing her so that
she miscarried;
per quod, plain-
tiff lost her so-
ciety, and was
put to expence
in getting her
cured.

BROWN
against

LONDON, to wit. William Brown com-
plaints of William Lawrence being, &c.; for that
LAWRENCE. whereas the said defendant, on the fourth day of
November, A. D. 1775, with force and arms, &c. at, &c. broke
and entered a certain messuage or dwelling-house of the said plaintiff
there situate and being, and then and there made a great noise,
disturbance, and affray therein in the said messuage or dwelling-
house, making and continuing such his noise, disturbance, and af-
fray therein for a long time, to wit, for the space of two hours
then next following, without the leave or licence of the said
William, and against the will of the said plaintiff, and during all that
time greatly disturbed and disquieted the said plaintiff, and his
family, in the peaceable and quiet possession, use, and occupation
of the said messuage or dwelling-house, and then and there, in the
said messuage or dwelling-house, with force and arms, &c. to wit,
with swords, &c. made an assault upon one Elizabeth Brown, then
and still being the wife of the said plaintiff, who was then and
there pregnant and enfiant with child, and then and there beat,
bruised, wounded, and ill-treated the said Elizabeth, and then and
there pulled a chair from under the said E. wherein the said E. was
then sitting, with such force and violence, that the said E. fell to
and upon the ground there, and thereby then and there became and
was greatly bruised, hurt, injured, terrified, and affrighted, by
means of which said premises the said E. B. to being the said wife
of the said plaintiff, and being pregnant and with child as afore-
said, afterwards and before the natural time of delivery, to wit, on
the said fourth day, &c. at, &c. in, &c. was taken in labour, and
did then and there bring forth a female child dead, and by means of
the said several premises the said E. B. became sore, sick,
diseased, and disordered, and continued so sick, diseased, and
disordered for a long time, to wit, for the space of three weeks
then next following, whereby the said William for a long time, to
wit, during all the time last mentioned, was wholly deprived of the
comfort, company, and fellowship of his said wife, and of her
help, aid, and assistance in his domestic affairs, and the said plain-
tiff was, during the said time last aforesaid, necessarily forced and
obliged to lay out and expend, and did lay out and expend a large
sum of money, to wit, the sum of one hundred pounds in and
about the cure, nursing, and taking care of his said wife, to wit,
at, &c. in, &c.; And also for that the said defendant, on the fourth

ad Count, for
making an assault
on plaintiff's wife,
and beating her;
per quod, she became
sick, and plaintiff, during
a long time, lost
his consort, and was
obliged to expend money
in her cure.

day,

(BRIDGES)—(MOORING CHAIN CUTTING).

43

lay, &c. with force and arms, to wit, with swords, &c. at, &c. in, &c. made another assault on the said Elizabeth Brown, then and still the wife of the said plaintiff, and then and there again beat, bruised, wounded, and ill treated the said E. so that her life then was greatly despaired of, by means whereof the said E. became ill, diseased, and disordered, and continued so ill, diseased, and disordered for a long time, to wit, for the space of three weeks then next following; whereby the said plaintiff during all that time lost the said fellowship, comfort, and assistance of his said wife in domestic affairs, and was forced to lay out a large sum of money, to wit, the sum of one hundred pounds, in and about the cure of her illness, disease, and disorder occasioned in form aforesaid; and then and there did other wrong to the said William against the peace of our lord the king, &c. to the said plaintiff his damage of two hundred pounds; and therefore he brings his suit, &c.

J. MORGAN.

SOMERSETSHIRE, to wit. For that the said defendant, on, &c. with force and arms, &c. threw down, pulled down, and prostrated a certain bridge of the said plaintiff lately erected, and being in the parish, &c. in the county of S. and with hatchets, axes, saws, and other iron instruments, then and there cut, hacked, sawed, and spoiled the materials of the said plaintiff thereof coming of a large value, to wit, of the value of ten pounds, and threw and tost the same into a river or water course there, whereby the same was carried down the said river or water course by the current of the said river or water course, and were wholly lost to the said plaintiff, and other wrongs, &c. Damages twenty pounds.

Declaration for breaking down plaintiff's bridge, cutting up the materials and throwing them into the river; *per quod* they floated away.

J. MORGAN.

THOMAS SOUND
against

CHARLES NOWELL & ROBERT GODDARD. } For that they the said defendants heretofore, to wit, on, &c. at, &c. in, &c. with force and arms, &c. cut and broke a certain chain of the said plaintiff of a large value, to wit, of the value of five pounds of, &c. then and there affixed and fastened to a certain mooring chain of the said plaintiff, then and there situate in the river Thames, for the purpose of mooring and fastening boats, barges, and other vessels to in the said river, and then and there let slip and sunk the said mooring chain to the bottom of the said river, whereby the said plaintiff by himself and his servants was then and there put to great trouble, labour, expence, and loss of time, to wit, five pounds expence of money and twelve hours loss of time in dragging and searching in the said river for, and in recovering the said mooring chain in order to make the same again useful to and to use the same in the mooring and fastening of boats, barges, and other vessels as before, to wit, at, &c. in, &c. and was also obliged to lay out and expend, and did lay out

SURRY, to wit.

Declaration in trespass *vi et armis*, for cutting the plaintiff's chain fastened to his mooring chain in the river Thames, and letting it fall to the bottom of the river; *per quod* the plaintiff was put to trouble and expence in recovering them.

TRESPASS TO PERSONS (AND DWELLING-HOUSE)

out and expend a large sum of money, to wit, the sum of five pounds, in mending and repairing the said other chain so fastened to the said other chain: And also for that the said defendants afterwards, to wit, on, &c. at, &c. in, &c. with force and arms, &c. seized, took, and carried away, broke, cut, damaged, spoiled, and destroyed divers goods and chattels, to wit, a certain other chain and a certain lock of the said plaintiff of a large value, to wit, of, &c. and detained the same, and converted and disposed thereof to their own use; and other wrongs, &c. Damage ten pounds.

T. BARROW.

Declaration against defendants, for entering the dwelling-house of the said Joseph, and making a great noise and disturbance therein, and taking away several butts of beer, and making an assault on the plaintiff's wife, &c.

MIDDLESEX, to wit. Richard Pearce, &c. &c. &c. late of, &c. were attached to answer Joseph Hinton in a plea; wherefore the said defendants with force and arms broke and entered a certain dwelling-house of him the said Joseph, situate in the parish of, &c. in the county of Middlesex aforesaid, and there made a great noise and disturbance therein, and stayed and continued therein, making and continuing such noise and disturbance therein for a long space of time, and thereby during all that time disturbed and disquieted the said Joseph in the possession and occupation of his said house, and whilst they were so in the said house there with force and arms, &c. made an assault on the wife and servant of the said Joseph, and forcibly dragged, pulled, and hauled her about, and there by force broke open the door of and belonging to a certain cellar of the said Joseph there situate and being, and of and belonging to the aforesaid dwelling-house, and with force and arms, &c. entered into the same, and seized and took divers goods and chattels of him the said Joseph there then found, and being of a large value, and carried away the same, and converted and disposed thereof to their own use: And also wherefore they the said defendants with force and arms, &c. at, &c. in, &c. seized and took divers other goods and chattels of the said Joseph there then found, and being of a large value, and carried away the same, and converted, &c. and other wrongs to him the said Joseph there did against the peace of our lord the king, and to the great damage of the said Joseph; and thereupon the said Joseph, by P. M. his attorney, complains, for that they the said defendants heretofore, to wit, on, &c. to wit, at, &c. with force and arms, &c. broke and entered a certain dwelling-house of him the said Joseph, situate in the parish and county aforesaid, and then and there made a great noise and disturbance therein, and stayed and continued therein, making and continuing such noise and disturbance therein for a long space of time, to wit, for the space of twelve hours, and during all time disturbed, &c. &c. [same as before to this mark †], to wit, twenty butts and twenty casks of beer there then found, and being of a large value, to wit, of the value of one hundred pounds, and carried, &c. and converted, &c.: And also for that afterwards, to wit, on, &c. with force and arms, &c. seized and took divers other goods and chattels, to wit, twenty other butts of

AND TO PERSONAL PROPERTY.

of beer of him the said Joseph there then found, and being of a large value, &c. and carried, &c. and converted, &c. and other wrongs to him the said Joseph there then did against the peace, &c. and to the damage of him the said Joseph of one hundred pounds; and therefore he brings his suit, &c.

V. LAWES.

MIDDLESEX, to wit. M. Novosielski complains of Charles Hughes, being, &c.; for that the said Charles heretofore, to wit, on, &c. at, &c. with force and arms, &c. seized and took, and caused and procured to be seized and taken divers goods and chattels of the said M. N. of a large value, to wit, of the value of five hundred pounds of lawful, &c. that is to say, two silver tickets, purporting to be and being tickets entitling him the said M. N. and the bearer and bearers thereof for the time being to admission into a certain theatre, or place of public entertainment and exhibition, called and known by the name of the Royal Circus, situate in the parish of, &c. in the county of Surry, during the performances and exhibitions from time to time taking place there, and such said tickets were transferrable and capable of being transferred or delivered over from or let out by the said M. N. as such proprietor thereof as aforesaid, to any other person or persons for the purpose of procuring and entitling them to such admission unto the said theatre or place of entertainment as aforesaid, and then and there kept, withheld, and detained the said tickets, and caused and procured the same to be kept, withheld, and detained from him the said M. N. for a long space of time, to wit, from thence hitherto; whereby he the said M. N. was and hath not only for and during all that time been hindered and prevented from gaining admission into the said theatre or place of public entertainment himself, at and during the performances and exhibitions which have taken place there during that time by virtue of such tickets, but was and hath during all that time been hindered and prevented from transferring, delivering over, or letting out the same to any other person or persons for the purpose of entitling them to admission into the said theatre or place of entertainment during the said performances and exhibitions there, and particularly to one A. B. and C. D. who would otherwise have respectively taken and hired the said tickets of the said M. N. during certain periods of performance at the said theatre or place of entertainment during the time aforesaid; and the said M. N. hath thereby and by reason of his being so disabled from transferring or letting out the said tickets as aforesaid, lost (a) and been deprived of certain sums of money, amounting in the whole to a large sum of money, to wit, the sum of three hundred pounds, which he could otherwise have acquired.

Declaration against the defendant for seizing two silver tickets of the plaintiff, whereby he was prevented from getting admission into a public place of entertainment

(a) If plaintiff can establish any specific loss of this kind it is material, but in order to enable him to recover for it it should be taken, V.L.

and Count.

ed, and which would have arisen and accrued to him from such transfer or letting out of the said tickets, to wit, at Westminster aforesaid, in the said county of Middlesex: And also for that the said Charles heretofore, to wit, on, &c. seized and took divers other goods and chattels, to wit, two other silver tickets, purporting to be and being tickets entitling the bearer or bearers thereof to admission into the said theatre or place of public entertainment and exhibition called the Royal Circus during the performances there; and two other silver tickets and two ounces of silver of the M. N. there then found, and being of a large value, to wit, of the value of five hundred pounds of lawful, &c. and carried away the same, and converted and disposed thereof to his own use, and other wrongs to the said M. N. then and there did, against the peace of our lord the now king, and to the damage of the said M. N. of one thousand pounds, and therefore he brings his suit.

V. LAWES.

Declaration against defendant, for breaking open the door of the plaintiff's house and spoiling the lock, and then and there ejecting the plaintiff from his house, and seizing his goods and laying them in the highway, whereby plaintiff was put to great trouble and expence in watching his goods.

HERTFORDSHIRE, to wit. Daniel Rogers complains of David Jackson, &c.; for that the said David the elder, and David Jackson the younger, on, &c. with force and arms broke and entered the dwelling-house of the said Daniel, situate, standing, and being at Elstree, in the said county of H. and broke open, broke down, broke to pieces, cut, damaged, prostrated, and destroyed the outer door of the said dwelling-house, and broke, damaged, and spoiled the lock, hinges, bolts, and fastenings, to wit, two pair of hinges, three bolts, and three fastenings of the said Daniel, of the value of twenty shillings, affixed to the door of the said dwelling-house, and wherewith the said doors then and there were fixed, locked, and fastened, and then and there with great force and violence ejected, expelled, put out, and amoved the said Daniel from and out of the quiet and peaceable possession, occupation, and enjoyment of his said dwelling-house, and continued him so ejected, expelled, put out, and amoved therefrom for a long space of time, to wit, continually from thenceforth hitherto, and then and there seized, took, removed, and carried away the goods and chattels of the said Daniel, to wit, one bedstead, &c. &c. in the said dwelling-house then found, and being of the value of fifty pounds, and depolited, lay, cast, and threw the same in and into the king's common highway, at E. aforesaid; by reason of which said removing and depositing, laying, casting, and throwing into the said king's common highway of the same goods and chattels the said Daniel was necessarily put to and sustained great anxiety, trouble, and fatigue in attending, taking care of, and watching his said goods and chattels while they remained in the said king's common highway, and until he could remove the same to a place of safety, in order as much as possible to prevent the same from being pilloined, stolen, and lost, and also in and about the removing them to such place of safety; and divers of the same goods and chattels, to wit, six plates, &c. of the value of twenty pounds,

PLEA—LIBERUM TENEMENTUM.

pounds, so being in the said king's common highway as aforesaid, were stolen, purloined, and taken from thence by certain persons to the said Daniel unknown, and were thereby wholly lost to him, and the residue thereof, of the value of thirty pounds, were greatly broke, damaged, and spoiled: And also for that, &c. &c. [2d Count, for entering a close of plaintiff, and spoiling the grafs, &c.] And also for that, &c. &c. [3d Count, for spoiling the garden plants of plaintiff with feet in walking]: And also for that, &c. [for making an assault on plaintiff's wife, whereby she became sick]: [For an assault on plaintiff.] Damages one hundred pounds.

2d Count, for entering plaintiff's close, and spoiling grafs.
3d Count, for spoiling garden plants of plaintiff.
4th Count, for an assault on plaintiff's wife.

And the said David the elder and David the younger, by John Reynolds the younger their attorney, come and defend the force and injury when, &c.; and say, they are not guilty of the trespass above laid to their charge, in manner and form as the said Daniel hath above thereof complained against them; and of this they put themselves upon the county, &c.: And for further plea as to the breaking and entering the said dwelling-house in the said first Count of the said declaration mentioned, and breaking open, &c. &c. the outer door of the said dwelling-house, and breaking, &c. &c. the lock, &c. and ejecting, &c. the said Daniel from and out of the possession of the said dwelling-house, and continuing him so ejected &c. therefrom for the said space of time in the said declaration in that respect mentioned, and seizing, &c. the said goods and chattels in the said first Count mentioned, and depositing, &c. &c. the same in and into the common king's highway: And also as to the breaking and entering the said close in the said second Count of the said declaration mentioned, and ejecting, &c. the said Daniel from and out of the possession, &c. thereof, and keeping and continuing him so ejected, &c. therefrom for the space of time in the said declaration in that respect mentioned, and with feet in walking, treading down, consuming, and spoiling the grafs, herbs, &c. there then growing and being, and with swine eating up and treading down, spoiling and consuming other the grafs, &c. and digging up, &c. other the herbs, &c. there then growing, and converting and disposing thereof to their own use, as in the second and third Counts of the said declaration is respectively mentioned and above supposed to have been done by the said David the elder and David the younger, they the said David, &c. by leave of, &c. &c. say, *actio non*; because they say, that the said close and the said grafs, herbs, &c. in the second Count of the said declaration mentioned, and the said close and the said grafs, &c. in the said third Count of the said declaration mentioned, are one and the same close, herbs, &c. and not other or different; and that the said dwelling-house in the said first Count of the said declaration mentioned and the said close in the said second and third Counts of the said declaration mentioned are, and at the said several times when, &c. were the dwelling-house, close, and freehold of the said David the elder, for which reason the said David the elder in-

Plea; 1st, not guilty; 2d plea, as to the breaking open the door, spoiling the lock, ejecting the plaintiff, seizing his goods, and putting them in the highway, and treading down the grafs; the defendants say, that the house belonged to one of them, and as to treading down the grafs and plants, the defendants say, that they also were theirs, and as to assaulting the wife they say, for assault.

PLEA—SON ASSAULT DEMESNE.

his own right, and the said David the younger as his servant, and by his command at the said several times when, &c. entered into the said dwelling-house in which the said trespass is above supposed to have been committed, as being the dwelling-house and close of the said David the elder, and broke open, &c. the outer door of, &c. as being the door of him the said David the elder, and broke, &c. the locks, &c. as being the lock, &c. of him the said David the elder, and ejected, &c. the said David from and out of the possession of the said dwelling-house and close, as being the dwelling house and close of him the said David the elder, and with feet in walking trod, &c. the grass, &c. there then growing and being in the said close in the second and third Counts of the said declaration in that respect mentioned, as being the grass, &c. of the said David the elder growing in his said close, and with the said swine in the said declaration mentioned eat up, &c. the grass, then growing, and in the second and third Counts in that respect respectively mentioned, as being the grass, &c. of the said David the elder growing in his said close, and digging up, &c. other herbs, &c. there growing, and converted and disposed thereof to his own use, as being the herbs, &c. of him the said David the elder, growing in his said close, as he lawfully might do; and because the said goods and chattels in the said first Count of the said declaration mentioned, at the said time when, &c. were wrongfully in the said dwelling-house in the said first Count of the said declaration mentioned, taking up room, and incumbering the same there, they the said David the elder and David the younger, at the said time when, &c. seized, took, removed, and carried away the said goods, &c. from and out of the said dwelling-house, and deposited, laid, cast, and gently threw the same in and into the said highway, in the said first Count mentioned, near to the said dwelling-house (the same being the nearest and most convenient place for that purpose), and there left the same for the said Daniel as they lawfully might do for the cause aforesaid, which are the same trespasses in the introductory part of this plea mentioned, and whereof the said Daniel hath above complained against them the said David the elder and David the younger; and this, &c.; wherefore, &c. if, &c.: And for further plea as to the assaulting, &c. the said Ann Rogers, the wife of the said Daniel in the said fourth Count of the said declaration above supposed to have been done by the said David the elder, he, by like leave of, &c. according to the form of, &c. the said David the elder says *actio non*; because he says, that just before the said time when, to wit, on, &c. in the fourth Count of the said declaration mentioned, at, &c. the said Ann, the wife of the said Daniel, made another assault upon the said David the elder, and would then and there have beat, &c. if he the said David the elder had not then and there immediately defended himself against the said Ann, whereupon he the said David the elder did then and there immediately defend himself against the said Ann, as it was lawful for him to do for the cause aforesaid; and so the said David the elder

*Son assault de-
mesne.*

REPLICATION, DE INJURIA, &c.

elder saith, that if any injury or damage then and there happened or arose to the said Daniel, the same arose and was occasioned by the said assault of the said Ann so by her made upon the said David the elder as aforesaid, and in the defence of him the said David the elder; and this, &c.; wherefore, &c. if, &c.: And for further plea as to the assaulting, &c. the said Ann, the wife of the said Daniel, by the said David the younger, &c. &c. [as the last plea, omitting "younger"]: And for further plea as to the assaulting, &c. the said Daniel by the said David the elder, as in the said fifth Count of the said declaration mentioned, he the said David the elder, by like leave of, &c. according to, &c. *actio non*; because he says, that just before the said time when, &c. to wit, on, &c. the said Daniel made an assault on the said David the elder, &c. &c. [as in the last plea, only say, that Daniel made the assault on David the elder]: And for further plea, &c. [like the last, on the son.]

V. LAWES.

And as to the plea of the said David the elder and David the younger, by them secondly above pleaded in bar to the said breaking and entering the said dwelling-house in the said first Count of the said declaration mentioned, and breaking open, breaking down, breaking to pieces, cutting, damaging, prostrating, and destroying the outer door of the said dwelling-house, and breaking, damaging, and spoiling the locks, &c. and ejecting, expelling, putting out, and removing the said Daniel from and out of the possession of the said dwelling-house, and continuing him so ejected, &c. therefrom for the said space of time in the said declaration in that respect mentioned, and seizing, taking, removing, and carrying away the said goods and chattels in the said first Count mentioned, and depositing, laying, casting, and throwing the same into the common king's highway: And also as to the breaking and entering the said close in the said second Count of the said declaration mentioned, and ejecting, &c. the said Daniel from and out of the possession, occupation, and enjoyment thereof, and keeping and continuing him so ejected, &c. for the said space of time in the said declaration in that respect mentioned, and with feet in walking, treading down, consuming, and spoiling the grass, &c. there then growing and being, and with swine eating up, treading down, consuming, and spoiling other the grass, herbs, &c. there then growing, and digging up, pulling up, taking, and carrying away other the herbs, &c. there then growing, and converting and disposing thereof to their own use, as in the second and third Counts of the said declaration is mentioned, and above done and committed by the said David the elder and David the younger, the said Daniel says, that he the said Daniel, by reason of any thing in that behalf alleged, ought not to be barred from having and maintaining his aforesaid action thereof against them; because he says, that neither the said dwelling-house in the said first Count of the said de-

Replication denying that the house and close belonged to the defendants, and as to the assaulting the plaintiff and his wife plaintiff says *de injuria, &c.*

TRESPASS.—REPLICATION, DE INJURIA.

declaration mentioned, nor the said close in the second and third Counts of the said declaration mentioned, is, or at the said several times when, &c. or any or either of them, was the dwelling-house, close, or freehold of the said David the elder, as the said David the elder and David the younger have in that plea above alledged; and this, &c.; wherefore, &c. and his damages by him sustained on occasion of the committing of the same trespasses to be adjudged to him, &c.: And the said Daniel, as to the said plea of the said David the elder by him thirdly above pleaded in bar, as to the said assaulting, &c. the said Ann, the said wife of the said Daniel in the said fourth Count of the said declaration mentioned above done by the said David the elder, says, that by reason of any thing in that plea contained, he the said Daniel ought not to be barred from having and maintaining his aforesaid action thereof against him; because he says, that the said David the elder of his own wrong, and without cause by him in that plea above alledged, assaulted the said Ann, the said wife of the said Daniel, and beat, &c. in manner and form as the said Daniel hath above thereof in the said fourth Count of the said declaration complained against; and this he the said Daniel prays may be enquired of by the country, &c.: And the said Daniel, as to the said plea of the said David the younger fourthly above pleaded in bar, as to the assaulting, beating, bruising, wounding, and ill treating the said Ann, the said wife of the said Daniel in the said fourth Count of the said declaration mentioned above done by the said David the younger, says, that by reason of any thing in that plea contained, he the said Daniel ought not to be barred from having and maintaining his aforesaid action thereof against him; because he says, that the said David the younger of his own wrong, and without the cause by him in that plea above alledged, assaulted the said Ann, the wife of the said Daniel, and beat, bruised, wounded, and ill treated her the said Ann, the said wife of the said Daniel, in manner and form as the said Daniel hath above thereof in the said fourth Count of the said declaration complained against him; and this he the said Daniel prays may be enquired of by the country, &c.: And the said Daniel, as to the said plea of the said David the elder fifthly above pleaded in bar, as to the said assaulting, beating, bruising, wounding, and ill-treating him the said Daniel in the last Count of the said declaration mentioned above done, says, that by reason of any thing in that plea contained, he the said Daniel ought not to be barred from having and maintaining his aforesaid action thereof against him; because he says, that he the said David the elder of his own wrong, and without the cause by him in that plea above alledged, assaulted the said Daniel, and beat, bruised, wounded, and ill-treated him the said Daniel of the said declaration complained against him; and this he the said Daniel prays may be enquired of by the country, &c.: And the said Daniel, as to the said plea of the said David the younger by him lastly above pleaded in bar, as to the said assaulting, beating, bruising, wounding, and ill-treating the said Daniel in the said last Count of the said declaration mentioned

REJOINDER AND ISSUE.

tioned above done, says, that by reason of any thing in that plea contained, he the said Daniel ought not to be barred from having and maintaining his aforesaid action thereof against them; because he says, that the said David the younger of his own wrong, and without the cause by him in that plea above alledged, assaulted the said Daniel, and beat, bruised, wounded, and ill-treated him the said Daniel, in manner and form as the said Daniel hath above thereof in the said last Count of the said declaration complained against him; and this he the said Daniel prays may be enquired of by the country, &c.

C. RUNNINGTON.

And as to the said plea of the said Daniel by him above pleaded Rejoinder, by way of reply to the said plea of the said David the elder and David the younger by them secondly above pleaded in bar to the said breaking and entering the said dwelling-house in the first Count of the said declaration mentioned, and breaking open, breaking down, breaking to pieces, cutting, damaging, prostrating, and destroying the outer door of the said dwelling house, and breaking, damaging, and spoiling the locks, hinges, bolts, and fastenings thereof, and ejecting and expelling, putting and amoving the said Daniel from and out of the possession of the said dwelling-house, and keeping him so ejected, expelled, put out, and amoved therefrom for the said space of time in the said declaration in that respect mentioned, and seizing, taking, moving, and carrying away the said goods and chattels in the said first Count mentioned, and depositing, laying, casting, and throwing the same in and into the king's highway: And also as to the breaking and entering the said close in the said second Count of the said declaration mentioned, and ejecting, expelling, putting out, and amoving the said Daniel from and out of the possession, occupation, and enjoyment thereof, and keeping and continuing him so ejected, expelled, put out, and amoved therefrom for the said space of time in the said declaration in that respect mentioned, and with feet walking, treading down, consuming, and spoiling the grass, herbs, roots, and garden stuff there then growing and being, and with swine eating up, treading down, and spoiling and consuming other the grass, herbs, roots, and garden stuff there then growing, digging up, pulling, and taking and carrying away other the herbs, roots, and garden stuff there then growing, and converting and disposing thereof to their own use, as in the second Count of the said declaration is mentioned, and above supposed to have been done and committed by the said David the elder and David the younger, they the said David the elder and David the younger say, that the said Daniel ought not to have or maintain his aforesaid action thereof against them the said David the elder and David the younger, because protesting that the said plea so pleaded in reply, and the matters therein contained, in manner and form as the same are above pleaded and set forth, are not sufficient in law for the said Daniel to have or maintain his said action thereof against them; for rejoinder in this behalf they the said David the elder and David the

TRESPASS TO PERSONAL PROPERTY—

younger say, that the said dwelling-house in the first Count of the said declaration mentioned, and the said close in the said second and third Counts of the said declaration mentioned, were, and at the said several times when, &c. were the dwelling-house, close, and freehold of the said David the elder, in manner and form as the said David the elder and David the younger have above in the said second plea in that behalf alledged; and of this they put themselves upon the country: And as to the said plea of the said Daniel by him above pleaded, by way of reply to the said plea of the said David the elder by him thirdly above pleaded in bar, as to the said assaulting, beating, bruising, wounding, and ill treating the said Ann, the said wife of the said Daniel in the said fourth Count of the said declaration mentioned above supposed to have been done by the said David the elder, and whereof the said Daniel hath put himself upon the country, he the said David the elder doth the like, &c.: And as to the said plea of the said Daniel by him above pleaded by way of reply to the said plea of the said David the younger fourthly above pleaded in bar, as to the said assaulting, beating, bruising, wounding, and ill-treating the said Ann, the said wife of the said Daniel in the said fourth Count of the said declaration mentioned above supposed to have been done by the said David the younger, and whereof the said Daniel hath put himself upon the country, he the said David the younger doth the like, &c.: And as to the said plea of the said Daniel by him above pleaded by way of reply to the said plea of the said David the elder fifthly above pleaded in bar, as to the assaulting, beating, bruising, wounding, and ill-treating him the said Daniel in the last Count of the said declaration mentioned above supposed to have been done, and whereof the said Daniel hath put himself upon the country, &c. he the said David the elder doth the like, &c.: And as to the said plea of the said Daniel by him above pleaded by way of reply to the said plea of the said David the younger by him lastly above pleaded in bar, as to the said assaulting, beating, bruising, wounding, and ill-treating the said Daniel in the said last Count of the said declaration mentioned above supposed to have been done, and whereof the said Daniel hath put himself upon the country, he the said David the younger doth the like, &c.

V. LAWES.

Declaration,
trespas for tak-
ing two anchors
from on board a
ship belonging
to plaintiff.

KENT, to wit. J. S. complains of T. K. being, &c.; for that the said Thomas, on, &c. with force and arms, at, &c. in, &c. broke and entered a certain ship or vessel of the said Thomas called, &c. and took two anchors of the said Joseph of a large value, to wit, of the value of ten pounds, there then found and being in the said ship or vessel, and carried away the same, and converted and disposed thereof to his own use: And also for that the said Thomas afterwards, to wit, on, &c. with force and arms, &c. at, &c. in, &c. broke and entered a certain other ship or vessel of the said Joseph called, &c. and took one other anchor of the said Joseph of a large

(ENTERING DWELLING-HOUSE.)—PLEA.

a large value, to wit, of the value of five pounds, there then found and being in the said ship or vessel, and carried away the same, and converted and disposed thereof to his the said Thomas's own use. [Add another Count for seizing two anchors generally], and other wrongs to the said Joseph then and there did, against the peace of our lord the king, and to the damage of the said plaintiff of twenty pounds; and therefore he brings his suit. V. LAWES.

YORKSHIRE, to wit. John Clarke complains of Thomas Lister and Thomas Atkinson; for that the said T. L. and T. A. on, &c. and on divers other days and times between that day and the day of the exhibiting this bill, with force and arms broke and entered the dwelling-house of the said John, situate, standing, and being at, &c. and then and there made a great noise and disturbance therein, and greatly disturbed the said John in the quiet and peaceable enjoyment thereof, and staid and continued in the said dwelling-house, making and continuing such noise and disturbance therein for a long space of time, to wit, for the space of four days then next following, and then and there seized, took, and carried away the goods and chattels of said plaintiff, to wit, &c. of said plaintiff, then and there being of the value of fifty pounds, and converted and disposed thereof to their own use. [2d Count, seizing goods, and converting, and other wrongs, &c.] Damages one hundred pounds. Suit, &c. Pledges, &c.

1st. Not guilty of the premises: And for further plea in this behalf as to, &c. (*actio non*); because they say, that the said T. A. before the said time when the said supposed trespass in the introductory part of this plea mentioned was committed, to wit, in Trinity term, in the twenty-sixth year, &c. in the court of our lord the now king before the king himself, the said court then and still being at, &c. by the consideration of the same court recovered against one W. H. thirty-five pounds, which in and by the said court was then and there adjudged to the said T. A. for his damages which he had sustained, as well by reason of the not performing of certain promises and undertakings then lately made by said W. H. to said T. A. as for his costs and charges by him about his suit in that behalf expended, whereof said W. H. was convicted, as by the record and proceedings thereof still remaining in the said court here more fully appears: And the said T. L. and T. A. in fact further say, that after the aforesaid recovery, and before the said time when, &c. to wit, on, &c. he the said T. A. for having execution of and for the damages aforesaid sued and prosecuted out of the said court of our said lord the king before the king himself, a certain writ of our said lord the king called a *feri facias*, directed to the sheriff of the said county of York, by which said writ our said lord the king commanded the said sheriff that he should cause to be levied of the goods and chattels of the said W. H. in his bailiwick the said pounds, which in the said court of our said lord the king, before the king himself,

PLEA—JUSTIFICATION BY AUTHORITY OF LAW.

himself, were awarded to the said T. A. for his damages aforesaid; and that the said sheriff should have that money before our lord the king at Westminster on, &c. to render to the said T. A. for his said damages, whereof the said W. H. was convicted, and that the said sheriff should have there that writ; which said writ afterwards, and before the said return thereof, and also before the said time when, &c. to wit, on, &c. at, &c. was delivered by the said T. A. to R. L. esquire, who then and from thenceforth until at and after the said time when, &c. was sheriff of the said county of York to be executed in due form of law; by virtue of which said writ he said R. L. esquire, so being sheriff of the county of Y. as aforesaid, afterwards and before the return of the said writ, and also before the said time when, &c. to wit, on, &c. last aforesaid, for having execution of his said writ made his warrant in writing, sealed with the seal of his office of sheriff, and then and there directed the said warrant to the said J. L. he the said J. L. then and there being one of the bailiffs of the said sheriff, and by the said warrant then and there commanded him said J. L. as such bailiff as aforesaid, that of the goods and chattels of the said W. H. in his the said sheriff's bailiwick, he should cause to be made the said pounds so recovered by the said T. A. as aforesaid, and in the aforesaid writ mentioned, so that he the said sheriff might have that money ready and before our said lord the king on the said, &c. in the said writ mentioned, to render to the said T. A. for his damages aforesaid, according to the exigency of the said writ, which said warrant, to wit, on, &c. last aforesaid, at, &c. was delivered to the said J. L. as such bailiff of the said sheriff as aforesaid, to be executed in due form of law: And said defendants in fact say, that before and at the said time when, &c. divers goods and chattels of the said W. H. liable to be taken in execution by the said sheriff, under and by virtue of the said writ, were in the said dwelling-house in the said declaration mentioned, and in which, &c.; and that thereupon by virtue of said warrant to the said J. L. on the said warrant as aforesaid, and in order to have execution thereof, the said J. L. as such bailiff as aforesaid, and the said T. A. in his aid and assistance, and by his command, afterwards and before the return of the said writ, to wit, at the said time when, &c. peaceably and quietly entered into the said dwelling-house in the said declaration mentioned, and in which, &c. by the outer door thereof, (the same being then and there open) to seize and take in execution the said goods and chattels of the said W. H. so therein being as aforesaid, under and by virtue of the aforesaid warrant, as it was lawful for them to do for the cause aforesaid, and in so doing they the said T. L. and T. A. did necessarily and unavoidably make a little noise and disturbance in the said house, and did also for the purpose aforesaid necessarily and unavoidably stay and continue in the said house, making and continuing such noise and disturbance for the said time in the said declaration in that respect mentioned, and did during that time, by means of the premises, a little disturb and disquiet the said John

AND UNDER LEGAL PROCESS.—REPLICATION—REJOINDER.

in the quiet and peaceable possession thereof, doing as little damage as they possibly could on that occasion, which are the same trespasses in the introductory part of this plea mentioned, whereof the said John hath above complained against them; and this, &c.; wherefore, &c. if, &c.

W. FIELDING.

And the said John, as to the said plea of the said defendants by them lastly above pleaded in bar, as to, &c. *precludi non*; because protesting that the said judgment was not recovered, and that the said writ called a *fiery facias* was not sued, or prosecuted, or delivered for execution, and that the said warrant was not thereupon made and delivered for execution in manner and form as in that plea is above alledged; nevertheless the said John, for replication in this behalf, says, that after the said breaking and entering the said dwelling-house in the said declaration mentioned, and whilst they said defendants staid and continued therein as in the said declaration mentioned, to wit, at the said several times when, &c. they the said defendants seized, took, and carried away of the goods and chattels of the said John of the value of forty shillings, then being therein; and this, &c.; wherefore since that the said defendants have above acknowledged the committing of the said trespasses by them by their said plea attempted to be justified, he the said John prays judgment and his damages, by occasion of the committing of those trespasses, to be adjudged to him, &c.

Replication.

G. S. HOLROYD.

And as to the said plea of the said plaintiff by him above pleaded, by way of reply to the said plea of the said defendants by them lastly above pleaded in bar as to, &c. (*actio non*); because they say, that they the said defendants did not, whilst they the said defendant's staid and continued in the said dwelling-house in the said declaration mentioned, seize, take, and carry away of the goods and chattels of the said plaintiff the said bed in the said declaration mentioned, in manner and form as he the said plaintiff hath above in his said replication in that behalf alledged; and of this they put themselves upon the country, &c.

Rejoinder.

On the first view of the replication in this case, I was inclined to think it demurrable, and the case of *Scott v. Dickson* strongly in favour of that idea, but then upon advertng to that case, it appears that the Court did not solemnly decide it, but adjourned the question, it is not therefore a complete authority, and on more mature consideration on the subject, and referring to the ancient authorities, I am induced to think the replication a good one, the object of it is to make the defendant's trespassers *ab initio*, by the seizure of something more than

merely the property of the plaintiff in the execution, viz. a bed, the property of the plaintiff, which if true, shews that the defendant's have abused that licence which the law gave them, in order to execute the *fiery facias*, and therefore the law will intend that they originally entered the house, not for the purpose of seizing the goods of the defendant in that writ, but to commit a trespass upon the property of plaintiff, and therefore they are looked upon as trespassers from the beginning.

V. LAWES.

TRESPASS to PERSONAL PROPERTY.—PLEA.

Declaration for taking and impounding plain-tiff's pigs.

HAMPSHIRE, to wit. Be it remembered, that in Hilary term last-past, before our said lord the king at Westminster came John Blandy, by A. B. his attorney, and brought into the said court of our said lord the king then there his bill against Thomas Grist, being in the custody of, &c. of a plea of trespass, and there are pledges for the prosecution, to wit, John Doe and Richard Roe, which said bill follows in these words, to wit, Hampshire, to wit: John Blandy complains of Thomas Grist, being, &c.; for that he the said Thomas heretofore, on, &c. at, &c. in, &c. with force and arms took and drove away the sow and pigs, to wit, one sow and fourteen pigs of the said John then and there found, and being of a large price and value, to wit, of the price and value of ten pounds, and then and there impounded, and caused and procured the same to be impounded, and to be kept and detained so there impounded for a long time, to wit, for the space of twenty-four hours then next following, and until the said John was forced and obliged to pay, and did then and there pay a large sum of money, to wit, the sum of eighteen shillings and threepence, to have the same redeemed and restored to him: And also for that he the said Thomas afterwards, to wit, on, &c. at, &c. with force and arms seized, took, and drove away other the sow and pigs, to wit, one other the sow and fourteen other the pigs of the said John there then found, and being of a large price, &c. and kept and detained the same for a long time, to wit, for the space of twelve hours then next following, and other wrongs to the said John then and there did, against the peace of our lord the now king, and to the damage of the said John of fifty pounds; and therefore he brings his suit, &c.

V. LAWES.

1 Count.

Plea; 1st, not guilty.

And now at this day, that is to say, on Friday next after the morrow of the Holy Trinity in this same term, until which day the said Thomas had leave to imparle to the said bill, and then and there to answer the same, &c. as well the said John, by his attorney, and the said Thomas, by C. D. his attorney, do come before our lord the king at Westminster, and the said Thomas defends the wrong and injury, when, &c. and says, that he is not guilty of the trespasses above laid to his charge, in manner and form as the said John hath above thereof complained against him; and of this he the said Thomas puts himself upon the country; and the said John doth the like: And for further plea in this behalf as to the seizing, taking, having, and driving away the said sow and pigs in the first Count of this declaration mentioned, and impounding the same, and causing and procuring the same to be impounded, and to be kept and detained so impounded for the said space of time in the said first Count in the said declaration mentioned, and until the said John was forced and obliged to pay, and did pay a large sum of money, to wit, the said sum of money in the said first Count of the said declaration mentioned, to have the same redeemed and restored to him; and also as to the seizing, taking, and driving away the said sow and pigs in the last Count of the said declaration mentioned, and keeping

2d Plea, that plaintiff, p. 11. f. 1. of a close, and that the pigs were therein sitting up the trees, doing damage, wherefore defendants seized them as a trespass.

JUSTIFICATION. DISTRESS. DAMAGE FEASANT.

and detaining the same for the said space of time in the said last Count of the said declaration mentioned, and by the said Thomas above supposed to have been done, he the said T. by leave of the court here for this purpose first had and obtained, according to the form of, &c. says, (*actio non*); because he says, that the said sow and pigs in the said first Count of the said declaration mentioned, and the said sow and pigs in the said last Count of the said declaration mentioned, are the same sow and pigs, and not other or different sow and pigs, and that the seizing, taking, having, and driving away the said sow and pigs in the said first Count of the said declaration mentioned, and keeping and detaining the same in the said first Count of the said declaration mentioned, and the said seizing, taking, and driving away the said sow and pigs in the last Count of the said declaration mentioned, and keeping and detaining the same in that Count mentioned, are the same seizing, taking, driving away, keeping, and detaining the said sow and pigs in the said declaration mentioned; and that the said time when, &c. in the said first Count of the said declaration mentioned, and the said time when, &c. in the said last Count of, &c. are one and the same time and not other and different times: And the said Thomas further says, that he the said Thomas, before and at the said time when, &c. was and still is lawfully possessed of a certain close called Stonege field, situate, lying, and being in the said parish of, &c. in, &c. and being so thereof possessed, and because the said sow and pigs in the said declaration mentioned at the said time when, &c. were in the said close of the said Thomas called Stonege field, eating up, treading down, and depasturing the barley and grass of the said Thomas as there then growing and being in the said close of the said Thomas, doing damage there to the said Thomas, he the said Thomas, at the said time when, &c. seized and took the said pigs in the said declaration mentioned, so being in the said close called Stonege field, and doing damage there to the said Thomas as aforesaid, for and in the name of a distress for that damage, and gently led and drove away the said sow and pigs in the said declaration mentioned, as he lawfully might, out of the said close of him the said Thomas to a certain common open pound in the parish aforesaid, in the county aforesaid, and there impounded the same, and caused and procured the same to be impounded and be kept and detained so there impounded as such distress for the said damage for the said space of time in the said declaration mentioned, and until the said John did pay a certain large sum of money, to wit, the sum of eighteen shillings and threepence, in the said declaration mentioned, as a satisfaction for the damages so done to the said Thomas as aforesaid, and in order to have the said sow and pigs in the said declaration mentioned redeemed and restored to the said John as aforesaid, which are the said several trespasses in the introduction to this plea mentioned, and whereof the said John hath above complained against the said Thomas; and this, &c.; wherefore, &c. if, &c.

J. LE MESURIER.

An

TRESPASS.—REPLICATION (DEFECT

Replication, that plaintiff is possessed of a close adjoining to a road near to defendant's close, and that the hedges of defendant's close which he ought to keep in repair were not so, and that as plaintiff was driving his pigs into his own field some of them escaped through the badness of the hedges into the defendant's close.

And the said John, as to the said plea of the said Thomas by him secondly above pleaded in bar as to the trespass in the introduction to that plea mentioned and above done by the said Thomas, says, that notwithstanding any thing in that plea above alledged he the said John ought not to be barred from having and maintaining his aforesaid action thereof against the said Thomas; because he the said John says, that though true it is that the said sow and pigs in the said first Count of the said declaration mentioned, and the said sow and pigs in the said last Count of the said declaration mentioned were the same sow and pigs, and that the seizing, taking, having, driving away, keeping, and detaining thereof in the said first Count mentioned and the said seizing, &c. in the said last Count mentioned are the same seizing, &c. the said sow and pigs at the said time when, &c. in the said first Count mentioned, and the said time when, &c. in the said second Count, are one and the same, as in the said second plea is alledged; yet the said John further says, that he the said John, long before and at the time when, &c. was and still is lawfully possessed of and in a certain close or piece of land called the Seventeen Acres, situate, lying, and being in the parish and county aforesaid, and contiguous and adjoining to a certain close of the said Thomas in the said second plea mentioned, and also in part contiguous and adjoining to a certain road then leading from a certain messuage in the possession of the said John, by and along a certain other part of the said close of the said Thomas unto and into the said close of the said John; and that the said Thomas and all other the tenants and occupiers of the said close of him the said Thomas for the time being, from time whereof the memory of man is not to the contrary, until the omission and default thereof hereinafter mentioned, have maintained and repaired, and have been used and accustomed to maintain and repair, and the said Thomas still of right ought to maintain and repair the hedges and fences between that part of his close which so lies contiguous to the aforesaid land and the said road when and as often as need and occasion hath required, to prevent cattle passing in and along the said road to and from the said close of the said John from going and escaping from and out of the said road into the said close of him the said Thomas and doing damage there: And the said John further saith, that being so possessed of his said close called the Seventeen Acres as aforesaid, he the said John, just before the said time when, &c. was driving his said sow and pigs in the said declaration mentioned from his aforesaid messuage through and along the said road to the said close of him the said John, in order to put the same there to feed and depasture, as he lawfully might; and because the said hedges and fences between that part of the said close of the said Thomas which so lies contiguous to the said road as aforesaid, and the said road before and at the said time when, &c. were ruinous, broken down, prostrated, and in great decay, for want of needful and necessary maintaining, repairing, and amending thereof, the said sow and pigs as the same were so going and passing along the said road to the said close of him

the

OF FENCES)—REJOINDER.

the said John, against the will of the said John, erred and escaped from and out of the said road into the said close of the said Thomas through the defects and defaults of the said hedges and fences, between that part of the said close of the said Thomas which so adjoins to the said road as aforesaid and the said road, and on that occasion were in the said close of the said Thomas until the said Thomas, at the said time when, &c. of his own wrong, seized, took, led, and drove away the said sow and pigs of the said John, and impounded the same, and kept and detained the same so impounded for the said space of time in the said declaration mentioned, and until the said John was forced and obliged to pay, and did pay the said sum of money in the said declaration mentioned to have the same redeemed and restored to him in manner and form as the said John hath above thereof against the said Thomas; and this, &c.; wherefore inasmuch as the said Thomas hath above acknowledged the said trespass in form aforesaid done, the said John prays judgment and his damages, by him sustained on occasion of the committing the same, to be adjudged to him, &c.

V. LAWES.

And as to the said plea of the said John by him above pleaded in reply to the said plea by the said Thomas by him secondly above pleaded in bar as to the trespass in the introduction to that plea mentioned, the said Thomas says, that the said John, notwithstanding any thing in that replication alledged, ought to be barred from having and maintaining his aforesaid action thereof against him the said Thomas, because he the said Thomas says, that although true it is that the said John long before and at the said time when, &c. was, and still is lawfully possessed of and in the said close or piece of land called the Seventeen Acres, situate, lying, and being in the parish and county aforesaid, and contiguous and adjoining to a certain part of the close of the said Thomas in the said second plea mentioned, and also in part contiguous and adjoining to a certain road leading from the said messuage in the possession of the said John by and along a certain other part of the said close of the said Thomas unto and into the said close of the said John in manner and form as the said John hath in his replication alledged; yet protesting that the said Thomas, and all other the tenants and occupiers of the said close of him the said Thomas for the time being, from time whereof the memory of man is not to the contrary, have not maintained and repaired, nor have been used and accustomed to repair and maintain; protesting also that the said Thomas ought not still of right to maintain and repair the hedges and fences between that part of his close which so lies contiguous to the aforesaid road, and the said road when and as often as need or occasion hath required, as the said John hath in his said replication alledged; nevertheless for a rejoinder in this behalf the said Thomas says, that the said hedges and fences between that part of the said close which so lies contiguous to the aforesaid road, and the said road

Rejoinder, protesting that defendant ought to repair; for rejoinder, defendant says the fences were in good repair, and that the pigs, for want of being yoked, got through the hedges.

TRESPASS.—SURREJOINDER.

road at the said time when, &c. were in good and sufficient repair until the said sow and pigs in the said declaration mentioned did, at the said time when, &c. for want of being yoked, wrongfully break down and through divers parts of the said hedges and fences between that part of the close of the said Thomas which lies contiguous to the aforesaid road and the said road, the said hedges and fences then being sufficiently maintained and in good repair, and through the said breaches in the said hedges and fences so made at the said time when, &c. wrongfully did break and enter into the said close in which, &c. and did there wrongfully and injuriously eat up, tread down, and depasture the barley and grafs of the said Thomas in the said plea secondly above pleaded in bar mentioned then growing and being in the said close of the said Thomas in which, &c. and did then and there do damage to the said Thomas in manner and form as the said Thomas hath above in his said plea secondly above pleaded in bar alledged; without this, that the said sow and pigs in the said declaration mentioned, at the time when, &c. erred and escaped from and out of the said road into the said close of the said Thomas through the defects and defaults of the said hedges and fences between that part of the said close of the said Thomas which so adjoins to the said road as aforesaid, and the said road in manner and form as the said John hath in his said replication above alledged; and this, &c.; wherefore, &c.; if, &c.

J. LE MESURIER.

Surrejoinder,
 protesting that
 the hedges were
 not in good re-
 pair, and that
 the pigs got in
 through the de-
 fects of the
 fences.

And as to the said plea of the said Thomas by him above pleaded by way of rejoinder to the said plea of the said John by him above pleaded by way of reply to the said plea of the said Thomas by him secondly above pleaded in bar as to the trespass in the introduction of that plea mentioned, he the said John says *procludi non*; because protesting that the said hedges and fences between that part of the said close of the said Thomas which so lies contiguous to the road in the said replication mentioned, and the said road at the said time when, &c. were not in good and sufficient repair, nor did the said sow and pigs in the said declaration mentioned at the said time when, &c. wrongfully break down the said hedges and fences between the said part of the said close of the said Thomas which so lies contiguous to the aforesaid road and the said road, or through such breaches in the hedges and fences wrongfully break and enter into the said close in which, &c. nor there wrongfully and injuriously eat up, tread down, or depasture the barley and grafs of the said Thomas as in the said rejoinder is alledged; for surrejoinder in this behalf he the said John says as before, that the said sow and pigs in the said declaration mentioned, at the said time when, &c. erred and escaped from and out of the said road into the said close of the said Thomas through the defects and defaults of the said hedges and fences between that part of the said close of the said Thomas which so adjoins to the said road, and the said road in manner and form as the said John hath in his said replication above alledged; and this

he

he the said John prays may be enquired of by the country; and the said Thomas doth the like, &c.

Therefore as well to try this issue as the said other issue above Issue. joined between the said parties, let a jury thereupon come before our said lord the king at Westminster on, &c. next after, &c. by whom, &c. and who neither, &c. to recognize, &c. because as well, &c. the same day is given to the said parties there, &c.

V. LAWES.

Michaelmas Term, 26. Geo. III.

SURRY, to wit. G. T. complains of G. J. being, &c; for that he the said defendant heretofore, to wit, on, &c. at, &c. in, &c. with force and arms, &c. plucked, pulled, and gathered a certain large quantity of plumbs of the said plaintiff there then growing, to wit, twenty bushels, and being of a large value, to wit, of the value of ten pounds of lawful money of Great Britain, and took and carried away the same, and converted and disposed thereof to his own use: And also for that he the said defendant heretofore, to wit, on, &c. at, &c. in, &c. with force and arms, &c. seized and took the goods and chattels, to wit, twenty other bushels of plumbs of the said plaintiff there then found and being of a large value, to wit, of the value of other ten pounds of like lawful money, and carried away the same, and converted and disposed thereof to his own use, and other wrongs to the said plaintiff then and there did, against the peace of our lord the now king, and to the damage of the said plaintiff of twenty pounds; and therefore he brings his suit, &c.

Declaration for
gathering
plumbs. and
converting, &c.

V. LAWES.

MIDDLESEX, to wit. W. C. complains of G. M. being, &c; for that the said defendant heretofore, to wit, on, &c. at, &c. with force and arms, shot, killed, and destroyed a certain dog of the said plaintiff there then found and being of a large price or value, to wit, of the price or value of twenty pounds, and other wrongs then and there did, &c. Damages, &c: Suit, &c.

Declaration for
shooting a dog.

V. LAWES.

R. K. } KENT, to wit. For that ~~where~~ the said L. on, &c. Declaration for
against } with force and arms, made an assault on the said R. at assaulting the
L. M. } the parish of H. in the said county of K. and then and plaintiff, and
there beat, bruised, wounded, and ill treated him, and with the throwing down
hands and fists of him the said L. then and there gave and struck his staff, on
the said R. divers and very many grievous and heavy blows and which were di-
strokes, and then and there forcibly, wilfully, and maliciously vers cakes, per
threw down, pushed down, and overset a certain stand, stall, or broke.
table of the said R. then and there standing, being, and placed, on
which

TRESPASS TO PERSONAL PROPERTY.

which said stall, stand, or table were then and there put, placed, standing, and exposed to sale divers goods and chattels of the said R. part thereof standing and being on the said stand, stall, or table, the residue thereof in certain baskets standing and being on the said stand, stall, or table, to wit, twenty loaves of bread, &c. &c. of the said Robert of great value, to wit, of the value of thirty pounds, and thereby threw down the said goods and chattels of the said Robert, by reason whereof the said R. wholly lost the said baskets, and the said other goods and chattels of the said Robert standing and being on the said stand, stall, or table, were then and there broken to pieces, crushed, damaged, spoiled, dirtied, and destroyed, and thereby became and were of no use or value to the said R. and the said R. was then and there hindered and prevented from selling and exposing to sale the said goods and chattels, and was wholly deprived and lost great gains and profits which he otherwise might, could, and would have obtained and gotten to himself from the selling thereof, to wit, at, &c. : And also for that, &c. [common assault] : And also for that the said L. afterwards, to wit, on, &c. with force and arms, at, &c. seized, took, damaged, destroyed, and spoiled other the goods and chattels of the said R. to wit, twenty other, &c. of the said R. of the value of other thirty pounds, there then found and being, and other wrongs and injuries to the said R. there did, to the great damage of the said R. and against the peace of our lord the now king ; whereupon the said R. saith that he is injured, and hath sustained damage to the value of one hundred pounds ; and therefore he brings his suit.

Drawn by MR. CROMPTON.

Declaration for DEVONSHIRE, to wit. B. late of, &c. was attached to
beating, wound- answer A. in a plea ; wherefore with force and arms at, &c. in,
ing, and killing &c. a certain gelding of the said A. of the value of forty pounds
the plaintiff's there found, he the said B. beat, bruised, wounded, and ill
gelding, in C.B. treated, so that the said gelding of the said A. languished of the
said bruises, cuts, and wounds for a long time, and the said A. was obliged to lay out and expend, and did lay out and expend a large sum of money in and about the endeavouring to cure the said gelding during that time, and the said gelding afterwards, by means of the said cuts, bruises, and wounds, died : And also wherefore with force and arms, at, &c. a certain other gelding of the said A. of ~~the value~~ of other forty pounds, there then found, he the said B. beat, bruised, wounded, and killed, and other wrongs to the said A. did, to the great damage of the said A. and to the great damage of our sovereign lord the king ; and thereupon the said A. by A. B. his attorney, complains, that the said B. on, &c. at, &c. in, &c. with force and arms, a certain other gelding of the said A. of the value of forty pounds of, &c. then and there found and being, beat, wounded, and ill treated, so that the said gelding of the said A. for a long space of time, to wit,
for

TRESPASS TO PERSONAL PROPERTY.

For the space of three months and upwards, languished of the said cuts, bruises, and wounds so given him by the said B. as aforesaid, and the said A. was obliged to lay out and expend, and did lay out and expend a large sum of money, to wit, the sum of twenty pounds, in and about the endeavouring to cure the said gelding during that time, and the said gelding afterwards, to wit, on, &c. at, &c. in, &c. in consequence of the said cuts, bruises, and wounds, died: And also for that the said B. on, &c. at, &c. with force and arms, a certain other gelding of said A. of the value of other forty pounds of like lawful money, then and there found and being, cut, beat, bruised, wounded, and killed, and other wrongs to the said plaintiff there did, to the great damage, &c. and against the peace of, &c.; whereupon the said plaintiff saith that he is injured, and hath sustained damage to the value of one hundred pounds; and therefore he brings his suit.

F. BULLER.

H. C.) MIDDLESEX, to wit. For that the said defend-
against } ant, on, &c. at, &c. in, &c. with force and arms, to
W. C.) wit, sticks, bludgeons, and other instruments, one
greyhound } of the said plaintiff then and there found and being, did
strike, beat, bruise, and wound, and by the force and violence of
divers and very many violent and grievous blows and strokes
then and there given by the said W. C. to the said greyhound, he
the said W. C. did then knock and strike out one of the eyes of
the said greyhound, and thereby occasioned the said greyhound to
lose and be deprived of one of its eyes: And also for that the said
W. C. afterwards, to wit, on, &c. at, &c. with force and arms,
one other greyhound of the said H. C. of the value of five pounds,
then and there found and being, did beat, bruise, wound, and
cripple, and other injuries to the said plaintiff then and there did,
against the peace of, &c. and to the damage, &c.

Declaration for
knocking out the
eye of a grey-
hound.

Drawn by MR. CROMPTON.

H. B.) SURRY, to wit. For that the said R. on, &c. and
against } on divers other days and times between that day and the
R. C.) day of exhibiting the bill of the said H. at, &c. with
force and arms drove, and with dogs chased the cattle of the said
H. to wit, one hundred sheep of the said H. and then and there
set on and enticed the said dogs to worry, bite, tear, and maul
the said sheep, whereby divers, to wit, ten of the said sheep of
the said H. of the value of twenty pounds, died, and others, to
wit, twenty others of the said sheep became rotten and foul, and
the residue of the said sheep were greatly hurt, injured, and dam-
nified: And also for that the said R. on, &c. and on divers other
days and times between, &c. at, &c. in a certain place there called
the Pease Marsh, drove and chased with dogs divers other cattle,
to wit, one hundred other sheep of the said H. of the value of

Declaration for
chasing sheep
with dogs,
whereby divers
died, and others
became rotten,
and the residue
greatly hurt.

TRESPASS TO PERSONAL PROPERTY.

two hundred pounds, whereby the said last-mentioned cattle were greatly injured, hurt, and damaged in value, and other injuries to the said H. then and there did, against the peace of our sovereign lord the king, and to the damage of the said H. of one hundred pounds; and therefore he brings his suit.

Drawn by Mr. CROMPTON.

Declaration for W. J. } MIDDLESEX, to wit. For that the said F. A. on,
shooting the *against* } &c. at, &c. in, &c. with force and arms, that is to say,
plaintiff's grey- F. A. } a certain gun, shot at, maimed, wounded, and killed a
hound. certain greyhound, of the value of five pounds, of and belonging
to the said W. then and there found and being, and other injuries
to the said William then and there did, against the peace of, &c.
and to the damage of, &c. *Drawn by Mr. CROMPTON.*

Declaration in FOR that the said defendant heretofore, to wit, on, &c. at,
trespas vi et &c. with force and arms, broke and entered the close of the said
arms, for enter- plaintiff there situate and being, and with feet in walking trod
ing the plain- down, trampled upon, and spoiled the grass there then growing
tiff's grounds and and being of a large value, to wit, of the value of five pounds,
cow-house, and and then and there, with force and arms, broke and entered a
taking away a certain cow-house of the said plaintiff there also situate and being,
cow, and de- and then and there seized and took a certain cow of the said
taining her till plaintiff there then found, and being of a large value, to wit, of,
he had paid 6l. &c. and then and there kept and detained the same till the said
plaintiff paid and was forced and obliged to pay a large sum of
money, to wit, the sum of six pounds of, &c. to have the said
cow released to him: And also for that the said defendant heretofore,
to wit, on, &c. at, &c. seized and took a certain other
cow of the said plaintiff there then found and being of a large
value, to wit, of the value of ten pounds of, &c. and kept and
detained the same for a long time, and until the said plaintiff
there paid and was forced and obliged to pay a large sum of
money, to wit, the sum of other six pounds of, &c. to have the
same cow restored to him the said plaintiff, and other wrongs to
him the said plaintiff then and there did against the peace of, &c.
Damages twenty pounds. T. BARROW.

Declaration in LANCASHIRE, to wit. J. H. complains of J. W. and
trespas by a Elizabeth W. being, &c.; for that they the said defendants here-
brick maker a- tofore, to wit, on, &c. at, &c. with force and arms, &c. broke
gainst the father and entered the close of the said plaintiff there situate and being,
and his daugh- and then and there trod down, trampled down, damaged, and
ter; about ten spoiled the grass of the said plaintiff there then growing and being
years of age, for of a large value, to wit, of the value of five pounds of, &c. and
spoiling plain- then and there, with their feet in walking, trod upon, trampled
tiff's bricks. upon, damaged, broke to pieces, and spoiled a large quantity, to
wit,

TRESPASS TO PERSONAL PROPERTY.

wit, ten thousand bricks in the clay of the said plaintiff there then being of a large value, to wit, of the value of fifty pounds of, &c. : And also for that they the said defendants heretofore, to wit, on, &c. at, &c. with force and arms, &c. trod upon, &c. divers, to wit, ten thousand other bricks in the clay of the said plaintiff there then being and laid out to dry of a large value, to wit, of the value of fifty pounds of &c. by reason of which said last-mentioned premises the said plaintiff was then and there forced and obliged to wheel and carry back the said last-mentioned bricks to a certain pit there for the purpose of re-moulding the same at a great expence, to wit, twenty pounds of the proper monies of the said plaintiff there then laid out, expended, and paid by the said plaintiff on that account, and other wrongs to the said plaintiff then and there did, against the peace of, &c. Damages fifty pounds.

T. BARROW.

I have some doubts how far the father may be liable to this action, or, if he is liable, whether it should be trespass *vi et armis*, or on the case; and though I think the child is liable to an action as a trespasser if she is of years of discretion, it seems an awkward one to bring into court against her alone. Upon the whole, therefore, I have joined the father and daughter as co-defendants, because if the father is answerable for the

conduct of the child, he, by not restraining it after notice, adopts and justifies its acts, and which in this case is trespass *vi et armis*; and, if the father is not amenable for the child, he may be found not guilty, and the action proceed against the child alone; and if they join in the plea, which probably they will, the father will not get his costs, though he should be acquitted.

THO. BARROW.

LANCASHIRE, to wit. W. D. late of, &c. was attached to answer R. H. in a plea; wherefore heretofore he the said W. D. with force and arms, &c. at, &c. on, in, &c. shot off and discharged a certain gun at, towards, and against a certain dog of the said plaintiff, then being of a large price and value, and thereby there shot, struck, and wounded the said dog, so that the said dog soon afterwards, at, &c. died: And also wherefore heretofore he the said W. D. at, &c. with force and arms, &c. shot off and discharged a certain gun at, towards, and against a certain other dog of the said plaintiff there being of a large price and value, and thereby shot, struck, and wounded the said last-mentioned dog, so that the same dog afterwards, at, &c. died: And also wherefore heretofore he the said defendant, with force and arms, &c. at, &c. shot, killed, and destroyed divers, to wit, two other dogs and two bitches of the said plaintiff there then being of a large price and value, and other wrongs to the said plaintiff there did, against the peace of our lord the now king, and to the great damage of the said plaintiff; whereupon the said plaintiff, by A. B. his attorney, complains, that the said defendant heretofore, to wit, on, &c. with force and arms, &c. at, &c. in, &c. shot off and discharged a certain gun at, towards, and against a certain dog of the said plaintiff there then being of a large price or value, to wit, of the price or value of twenty

Declaration in C. B. at Lancaster for shooting one of the plaintiff's hounds in pursuit of a hare.

pounds of, &c. and thereby then and there shot, struck, and wounded the said dog, so that the said dog soon afterwards, to wit, on, &c. at, &c. in, &c. died: And also for that the said defendant heretofore, at, &c. in, &c. with force and arms, &c. shot off and discharged a certain gun at, towards, and against a certain other dog of the said plaintiff, there then being of a large price or value, to wit, of, &c. and thereby shot, struck, and wounded the said last-mentioned dog, so that the same dog soon afterwards, to wit, on, &c. at, &c. died: And also for that the said defendant heretofore, to wit, on, &c. at, &c. in, &c. with force and arms, &c. shot, killed, and destroyed divers, to wit, two other dogs and two bitches there then being of a large price or value, to wit, of the price or value of forty pounds of, &c. and other wrongs, &c. against the peace of, &c. Damage forty pounds.

Plea that one A. B. is bow-bearer of the forest of W. *inter alios*, and that the defendant is his deputy, and that at the said time when, &c. the dogs mentioned in the declaration were chasing a beast of the forest called hare, where-ore he shot them.

1st, Not guilty: And for further plea in this behalf as to the shooting off and discharging the said gun in the first Count of the said declaration mentioned, at, towards, and against the said dog in the said Count mentioned, and thereby shooting, striking, and wounding the same dog, and as to the shooting off and discharging the said gun in the said second Count of the said declaration mentioned, at, towards, and against the same dog in the said Count mentioned, and thereby shooting, striking, and wounding the said last-mentioned dog, and as to the shooting, killing, and destroying the said two dogs and two bitches in the last Count of the said declaration mentioned above supposed to have been done, he the said defendant, by leave of, &c. says *ad id non*; because he says, that the said two dogs in the first and second Counts of the said declaration mentioned, and the said two dogs in the said last Count of the said declaration mentioned, at the said several times when, &c. were the same two dogs, and not other or different, as the said plaintiff hath in his said declaration above supposed: And the said defendant further saith, that before and at the time of the making of the grant hereinafter mentioned, and continually from that time until and at the said several times when, &c. and every of them our said lord the now king was seised of and in the forest of W. in the said county of L. with the appurtenances, being parcel of his dutchy of L. in his demesne as of fee in right of the said dutchy, and being so seised thereof as aforesaid, the said lord the king, long before the said several times when, &c. or any of them, to wit, on, &c. in the twenty-fifth year of his reign, at Westminster, in the county of Middlesex, by his letters-patent sealed as well with the seal of the said dutchy as with his seal of the said county palatine of L. bearing date the same day and year last-mentioned, for divers good causes and considerations him thereunto especially moving, and of his especial grace, certain knowledge, and mere motion, and by and with the advice and consent of his chancellor and council of his dutchy aforesaid, for himself, his heirs, and successors, did give and grant unto one A. B. esquire, the several offices of master forester, gamekeeper, and master of his game of deer and

AUTHORITY OF LAW—GAMEKEEPER.

and of all other game of and within the several forests, chaces, manors, lordships, royalties, and parks of W. B. and Q. in his said county palatine of L. and every of them, and him the said A. B. master forester, gamekeeper; and master of his game of deer and all other game of and within his several forests, &c. of W. B. and Q. in his said county palatine of L. he did for him his heirs and successors make, ordain, and constitute by the said letters-patent, to have, hold, enjoy, occupy, and exercise the said offices and every of them unto the said A. B. to be executed by himself or his sufficient deputy or deputies, for which or for whom he would be answerable during the term of his natural life, and the said lord the king did thereby for himself, his heirs, and successors, give and grant unto the said A. B. and his lawful deputies full power and authority to take and kill his deer within his several forests, &c. respectively in the service of lawful warrants to him or them issued for that purpose, and also to hunt, course, shoot, take, seize, and kill for the use of the said lord the king, his heirs and successors, with hounds, greyhounds, &c. [Set out the patent, which empowered A. B. to seize any dogs of persons not duly authorized], and being so seized thereof the said A. B. afterwards, to wit, on, A. B. deputed
the defendant, &c. at, &c. by his certain deputation in writing, sealed with his seal (which said deputation the said defendant now brings into court, the date whereof is the same day and year aforesaid) made, ordained, deputed, and constituted the said defendant his true, lawful, and sufficient deputy, gamekeeper, and deputy master of the game of deer and of all other game of and within the forest of W. aforesaid, for and during the term of his the said A. B.'s natural life, or until such time as he should revoke the deputation, and signify his pleasure to the contrary, giving and granting unto him the said defendant his full and whole power, licence, and authority to take and kill his majesty's deer, &c. &c. [Set out the deputation, which empowered the defendant to seize any dogs of persons not authorized] as by the said deputation, relation being thereunto had, by virtue where-
will appear; by virtue of which said deputation the said defendant then and there became, and continually from that time until gamekeeper.
and at the said several times when, &c. was the lawful deputy gamekeeper and deputy master of the game of deer and of all other game of and within the said forest of W. : And the said defendant further saith, that at the said several times when, &c. in the said declaration in that behalf respectively mentioned, each of the said several dogs and bitches in the said declaration mentioned respectively was in the possession and under the command of the said plaintiff at W. aforesaid, and within the said forest of W. the said plaintiff then and there being a person not duly authorized to use the same dog and bitches, or any of them, to kill hares within the said forest, and that the said dogs and bitches so being then and there respectively in the possession, and under the command of the said plaintiff as aforesaid, were at those respective times within the said forest respectively chasing one of those beasts of forest called a hare, belonging to the said lord the king and to his forest there;
where-

That at the said several times when, &c. the dogs were in the plaintiff's possession (he not being qualified) and chasing a hare.

wherefore the defendant shot them, wherefore the said defendant, at the said several times when, &c. in the said declaration respectively mentioned, in order to prevent the said dogs and bitches from killing the said hare, and in order to preserve the same, did then and there within the said forest shoot off and discharge a certain gun at, towards, and against the said dogs and bitches in the said declaration mentioned, and did thereby then and there shoot, strike, wound, kill, and destroy the same, as it was lawful for him to do for the cause aforesaid, which are the same trespasses in the introduction to this plea mentioned, and whereof the said defendant hath above complained against the said defendant: And the said defendant further saith, that the said A. B. is still living, to wit, at, &c.; and this, &c.; wherefore, &c. if, &c.

Replication to plea; 1st, as to not guilty, issue; 2d, protesting as to its sufficiency; protesting also that the king, at the time of the grant, was not seised, &c. and that defendant was not deputy gamekeeper. And the said plaintiff, as to the said plea of the said defendant by him secondly above pleaded in bar, says, that the said plaintiff ought not by any thing in that plea alledged to be barred from having and maintaining his aforesaid action against the said defendant; because protesting that the said plea of the said defendant secondly above pleaded in bar is not sufficient in law to bar the said Richard from having and maintaining his aforesaid action thereof against him; protesting also, that our said lord the now king, at the time of the making of the said grant in the said plea secondly above pleaded in bar mentioned, and continually from that time until and at the said several times when, &c. and every of them, was not seised of and in the said forest of W. within the said county of L. with the appurtenances in his demesne as of fee in right of the said duchy of L.; protesting also, that the said defendant, at the said several times in the said second plea in that behalf mentioned, was not the lawful deputy gamekeeper and deputy master of the game of deer and all other game within the forest of W. as in the said second plea above pleaded in bar alledged; protesting also, that the said dogs and bitches in the said declaration respectively mentioned were not in possession and under the command of the said plaintiff, as in the said second plea alledged; protesting also, that the said dogs and bitches were not at the said several respective times when, &c. within the said forest of W. chasing one of the beasts of forest called a hare, belonging to the said lord the king and to the said forest there, as is in the second plea alledged: For replication in this behalf the said Richard saith, that true it is that the said lord the king, by his said letters patent in the said plea of the said William by him secondly above pleaded in bar, did give and grant unto the said A. B. the said several offices in the said letters-patent mentioned, as is in and by the said plea of the said defendant secondly above

Replication, that the king was seised in fee in right of his duchy of L. of the forest, and of a vaccary in the forest of W. and granted the same vaccary by patent to E. and W. in fee, who bargained and sold a purparty to P. in fee, who dying seised of same, it descended to his son, who granted by lease and release to the plaintiff's father; that B. and W. by lease and release, conveyed another purparty to W. and F. in fee, who conveyed to H. F. by similar conveyance, who bargained and sold to H. the forest of W. who thereby became seised of the whole vaccary, on whose death it descended to H. his son, on whose death it descended to his son, the grandfather of the plaintiff, on whose death it descended to N. his son, the father of plaintiff, who became seised, and in right thereof was hunting when defendant shot his dogs.

TITLE—(LETTERS-PATENT.)

69

pleaded in bar alledged; but the said plaintiff further saith, that before and at the time of the making of the grant hereinafter mentioned, our late sovereign lord James, then king of England, was seised of and in the forest of W. in the county of L. with the appurtenances, being parcel of his said dutchy of L. in his demesne as of fee in right of the said dutchy, and of a certain vaccary, with the appurtenances, called Leigh, situate and being within the said forest of W. and parcel of the lands and possessions of the said dutchy; and being so seised of the said forest and vaccary, the said late sovereign lord James, then king of England, on, &c. in the twentieth year of the reign of the said late king James at Westminster, in the county of M. by his letters-patent sealed as well with the great seal of England as with the seals of his said dutchy and county palatine of Lancaster, bearing date the day and year last aforesaid, as well for and in consideration of the good, true, faithful, and acceptable service to him in many instances heretofore rendered by his most dear and right trusty cousin and counsellor George marquis of Bucks, then high admiral of England, as, for, and in consideration of the sum of two thousand pounds of lawful money of Great Britain into the receipt of his exchequer of Westminster in hand well and truly paid by his beloved subjects E. B. and W. W. of, &c. wherewith he did acknowledge himself to be fully satisfied and paid, and the said E. B. and W. W. their heirs, executors, and administrators, to be thereof by the said letters-patent for ever acquitted and discharged of his special grace, and out of his certain knowledge and mere motion at the special instance, request, and appointment of the said marquis, had given and granted, and by the said letters-patent for himself, his heirs, and successors, did among other manors, farms, messuages, mills, lands, tenements, vaccaries, pastures, and premises, with the appurtenances, give and grant unto the said E. B. and W. W. his heirs and assigns for ever, all that his vaccary, with the appurtenances in W. aforesaid called Leigh, then in the separate tenure of divers tenants there by the particulars thereof mentioned to be of the annual rent or value of two pounds six shillings and eightpence, all and singular which premises in W. aforesaid, by the particulars thereof were mentioned to be in the charge of the master forester of W. and to be parcel of the lands and possessions of the said dutchy of L. with all and singular his messuages, mill houses, edifices, buildings, barns, stables, feedings, woods, gardens, orchards, lands, tenements, meadows, feedings, woods, pastures, commons, demesne lands, wastes, furze heaths, moors, marshes, woods, underwoods, tithes of corn, grass, grain, and hay, wool, flax, hemp, and lambs, and all other his tithes whatsoever, as well great as small, and also oblations, obventions, fruits, and profits, waters, piscaries, fishings, suits, sokes, mulctures, warrens, mines, quarries, rents, relervations, services, rent charges, rent seek, and rents and services as well of free as customary tenants, work farms, fee farms, annuities, knight's fees, wards, marriages, escheats, reliefs, heriots, fines, amerciements, court leets, view of frankpledges appertaining, cattle waived, or estrays,

Letters patents
of Jac. 1.

To B. and W.
in tuc.

TRESPASS.—REPLICATION DEDUCING—

estrays, natives both male and female, and villains, with their sequels, estovers, and common of estovers, fairs, markets, tolls, tollages, customs, rights, jurisdictions, franchises, liberties, privileges, profits, commodities, advantages, emoluments, and hereditaments whatsoever, with all their appurtenances of what kind, nature, or sort whatsoever, or by whatsoever name or names called, named, or known, situate, lying, and being forthcoming, or growing or renewing within the towns, fields, parishes, or hamlets mentioned in the said letters-patent, or in or within any or either of them, or elsewhere soever to the aforesaid manors, farms, messuages, mills, lands, tenements, vaccaries, pastures, and other the premises by the said letters-patent before granted, or to any or either of them, in any wise belonging, appertaining, incident, or appendant, or as members. parts, or parcels of the said manors, &c. by the said letters-patent before granted, or any one either of them, had been known, accepted, occupied, used, or reputed: And further the said sovereign lord James, then king of England, of his more ample special grace, and of his certain knowledge and mere motion had for the considerations therein mentioned given and granted, and did by the said letters-patent for himself, his heirs and successors, give and grant to the aforesaid E. B. and W. W. their heirs and assigns, that they might from thenceforth have, hold, and enjoy, and should and might have, hold, and enjoy within the premises by the said letters-patent before granted, and within every part and parcel thereof, as many as the same sort of, and the like court leets, views of frankpledges, law days, assize, assay of bread, wine, and beer, chattels waived, estrays, chattels of felons and fugitive felons of themselves and of those put in exigent, deo lands, fees of knights, wards, marriages, escheats, reliefs, heriots, free warrens, and all other rights, jurisdictions, franchises, liberties, customs, privileges, profits, commodities, advantages, emoluments, and hereditaments whatsoever, as many as great, such, and as fully, freely, and wholly, and in as ample manner and form as the said late sovereign king James, or any other or others of his progenitors or ancestors, or any earl or duke of Lancaster, or abbot or abbots, prior or priors of any late monasteries or priories, or of any late monastery or priory or any chaplain or charter, or any other person or persons theretofore having possessed or being seised of the aforesaid manors, farms, messuages, lands, tenements, mills, vaccaries, pastures, and other the premises by the said letters patent before granted, or any part or parcel thereof had had or enjoyed, or to have held, used, or enjoyed in the premises by the said letters-patent before granted, or on any parcel thereof, by reason or pretence of any charter, gift, grant, or confirmation by the said sovereign lord king James, or any of his progenitors or ancestors heretofore had, made, granted, or confirmed, or by reason or pretence of any lawful prescription, use, or custom heretofore had or used, or by any other lawful means, right, or title whatsoever, and as fully, freely, and wholly, and in as ample manner and form as the said late sovereign king James, or any of his progenitors or ancestors had had or enjoyed, or should have had and enjoyed the aforesaid manors, &c. of all and singular other

other the premises by the said letters-patent before granted, and each of them, or any part or parcel thereof, the said late sovereign king James did further give, and did by the said letters-patent for himself, his heirs and successors, grant to the aforesaid E. B. and W. W. their heirs and assigns, the aforesaid manors, farms, messuages, lands, tenements, mills, vaccaries, pastures, and all and singular other the premises by the said letters-patent before granted, with all their appurtenances, as fully, freely, and wholly, and in as ample manner and form as all and singular the said premises by the said letters-patent granted, or in any parcel thereof, came or ought to have come to the hands of the said late sovereign king James, or to the hands of any of his progenitors or ancestors, late kings and queens of England, or any or either of them, by reason or pretence of the dissolution or surrender of any late monasteries, priories, or chauntries, or late monastery, priory, or chauntry, or by reason or pretence of any exchange or purchase, or of any gift or grant, or of any attainder or forfeiture, or by reason or pretence of any act or acts of parliament, or by reason of any escheating, or by any other lawful means, right, or title whatsoever, and then were or ought to have been in the hands of the said late sovereign king James, to have, hold, and enjoy the said manors, &c. and all and singular other the premises in the said letters-patent expressed and specified, and by them before granted, with all their rights, members, and appurtenances, and the remainder and remainders, reversion and reversions whatsoever of all and singular the premises and of each of them, and the rents and yearly profits whatsoever reserved upon any demise or grant, demises or grants of the premises whatsoever, or of any parcel thereof theretofore made or granted to the aforesaid E. B. and W. W. their heirs and assigns, to the sole and only proper use and behoof of the said E. B. and W. W. their heirs and assigns, in fee farm for ever, to hold the aforesaid manors, &c. and all and singular other the premises by the said letters-patent before granted, with all their appurtenances of the lord king James, his heirs and successors, as of his manor of Enfield, in his county of Middlesex, by fealty only in fee and common socage, and not in capite, nor by knight's service, yielding and paying to the said lord the king James, his heirs and successors, for the aforesaid vaccary called Leigh, with the appurtenances, two pounds six shillings and eightpence of lawful money of England, by the hands of the receiver general of the said dutchy of L. of the said sovereign lord king James, his heirs or successors, or his deputy for the time being, or by the hands of any particular receiver or bailiffs for the time being at the feast of, &c. by equal portions yearly for ever, in lieu of all rents, services, exactions, and demands whatsoever to be paid, done, and performed to the said lord king James, his heirs and successors; by virtue of which said last-mentioned letters-patent the said E. B. and W. W. then and there entered into the said vaccary called Leigh, W. W. entered on the vaccary called Leigh, and were seised, &c. and being so by conveyance purparty thereof to W. P.

Habendum.

In fee farm for ever.

As of the king's manor of E. in the county of M.

Reddendum

2l. 6s. 8d. for the vaccary.

By virtue of which letters-patent E. B. and W. W. bargained and sold

TRESPASS.—REPLICATION DEDUCING TITLE.

Bargain and sale
to W. P.

with the appurtenances in the said last-mentioned letters-patent mentioned, and became and were seised thereof in their demesne as of fee, and being so seised thereof the said E. B. and W. W. before the said time when, &c. that is to say, on, &c. in the twenty-first year of the reign of his said late majesty king James, late king of England, at, &c. in, &c. by a certain indenture of bargain and sale then and there made between the said E. B. and W. W. of the one part, and one W. P. of the other part (one part of which said indenture, sealed with the seals of the said E. B. and W. W. the said Richard brings here into court, bearing date the day and year in that behalf above-mentioned) the said E. B. and W. W. in consideration of a certain competent sum of good and lawful money of England, to them beforehand by the said W. P. well and truly paid, whereof the said E. B. and W. W. confessed themselves to be fully satisfied and paid, and the said W. P. his heirs, executors, and administrators, and every of them to be acquitted and exonerated for ever, by the said indenture did grant, bargain, sell, release, and confirm unto the said W. P. his heirs and assigns in fee farm for ever, all that part, purparty, portion, and parcel of a certain vaccary within the forest of W. in the county of L. called Leigh, then or late in the tenure of the said W. P. and his assigns, of the annual rent of one pound three shillings and fourpence, late parcel of the lands and possessions of the dutchy of L. being in the said county of L. and all and singular messuages, mills, houses, edifices, buildings, granaries, barns, stables, dove cots, orchards, gardens, lands, tenements, meadows, pastures, common of pasture, wastes, heaths, moors, marshes, messuages, ways, waters, fisheries, woods, underwoods and trees, and the ground and soil of the said woods, and underwoods and trees, and every of them, and every parcel thereof, and all and singular mines, quarries, rents, reversions, and services, farms, fee farms, annuities, customs, jurisdictions, franchises, liberties, privileges, enjoyments, commodities, advantages, emoluments, and hereditaments whatsoever, with all their appurtenances of whatsoever kind, or nature, or sort, or by whatsoever name or names they might be known, reputed, called, or named, situate, lying, coming, growing, renewing, or arising within the fields, places, parishes, hamlets, or forest aforesaid, or within any of them, or wheresoever else to the said premises by the said indenture granted, bargained, and sold, or to any part or parcel thereof, in any manner belonging or appertaining, or as members, parts, or parcels of the said premises now or ever before had known, accepted, occupied, or reputed to be as fully, freely, and wholly, and in as ample manner and form as the said lord the then king James by his said letters patent as well under his great seal of England, as under the seal of the county palatine of L. and the seal of the said dutchy of L. bearing date at Westminster, the twenty-first day of March, in the twentieth year of his reign, had given and granted the said premises with the appurtenances in the said indenture mentioned and specified, amongst other

other things, to the said E. B. and W. W. their heirs and assigns in fee farm for ever, to have, hold, and enjoy all and singular the said premises in the said indenture expressed and specified, and by the said indenture bargained and sold with all their appurtenances to the said W. P. his heirs and assigns in fee farm for ever, to be holden of the aforesaid lord the king, his heirs and successors as of his manor of E. in the county of Middlesex by fealty only in fee and common soccage, and not in capite or by knights service; and yeilding therefore annually to the said lord king James, his heirs and successors one pound three shillings and four pence of lawful money of England, by the hands of the receiver of the said lord king James, his heirs and successors, of the said dutchy of L. or his deputy for the time being, at the feasts of, &c. by equal portions for ever, in lieu of all other rents, services, and demands whatsoever, to be paid, done, and performed to our said sovereign lord the king James, his heirs and successors, as by the said last-mentioned indenture, reference being thereunto had, will more fully appear; which said indenture afterwards, and within six months next after the date thereof, to wit, on, &c. in the twenty-first year of his said late majesty king James, was, according to the form of the statute in such case made and provided, duly enrolled in the court of chancery of the said late lord king James, the said court then being at Westminster, in the county of Middlesex; by virtue of which said indenture of bargain and sale, and inrollment, by force of the statute for transferring uses into possession, the said W. P. was seised of the said premises, with the appurtenances, in the said indenture mentioned in his demesne as of fee; and being so seised thereof, the said W. P. afterwards, and before the said several times when, &c. to wit, on, &c. A. D. 1654, at, &c. in, &c. died so seised, after whose death the said premises, with the appurtenances, in the said indenture mentioned, descended and came to one J. P. as son and heir of the said W. P.; by means whereof the said J. P. became and was seised thereof in his demesne as of fee, and being so seised thereof the said J. P. afterwards, and before the said several times when, &c. to wit, on, &c. A. D. 1784, at, &c. in, &c. died so seised; after whose death the said premises, with the appurtenances, in the said indenture mentioned, descended and came to one J. P. as son and heir of the said J. P. by means whereof the said J. P. became and was seised thereof in his demesne as of fee; and being so seised thereof he the said J. P. afterwards, and before the said several times when, &c. to wit, on, &c. at, &c. in, &c. by a certain indenture then and there made between the said J. P. on the one part, and one R. H. the grandfather of the present plaintiff of the other part (one part of, &c.) for and in consideration of a certain sum of lawful money of Great Britain to the said J. P. in hand paid by the said R. H. the grandfather at or before the execution thereof, the said J. P. did grant, bargain, and sell unto the said R. H. the grandfather the premises, with the appurtenances, so granted by the said E. B. and W. W. to the said W. P. as aforesaid,

Habendum in fee farm for ever,

to be holden of the king as of his manor of B.
Reddendum to the king 1l. 3s. 4d.

which indenture was inrolled in chancery;

by virtue whereof W. P. seised in fee, and died so seised,

and the premises descended to James his son, who died seised, and the same descended to

John his son, who by lease and release granted the same to R. H. the plaintiff's grandfather.

aforesaid, to have and to hold to the said R. H. the grandfather from the day next before the day of the date of the said last-mentioned indenture for one year then next following, as by the said last-mentioned indenture may more fully appear; by virtue of which said last-mentioned bargain and sale, and by force of the statute for transferring uses into possession, the said R. H. the grandfather was possessed of the said premises, with the appurtenances, so granted by the said E. B. and W. W. to the said W. P. as aforesaid, for the term of one year aforesaid; and being so thereof possessed the said J. P. afterwards, and before the said several times when, &c. to wit, on, &c. A. D. 1702, at, &c. in, &c. by a certain other indenture then and there made between the said J. P. of the one part, and the said R. H. the grandfather of the other part (one part, &c.) for and in consideration of a certain sum of lawful money of Great Britain in the said last-mentioned indenture mentioned to him in hand paid by the said R. H. the grandfather, did grant, release, and confirm unto the said R. H. the grandfather, his heirs and assigns, the said premises, with the appurtenances, so granted by the said E. B. and W. W. to the said W. P. as aforesaid, to hold the same to the said R. H. the grandfather, his heirs and assigns for ever, as by the said last-mentioned indenture, reference being thereunto had, may more fully appear; by virtue of which said last-mentioned indenture, and by force of the statute made for transferring uses into possession, the said R. H. the grandfather became and was seised of the premises, with the appurtenances, so granted by the said E. B. and W. W. to the said W. P. as aforesaid, in his demesne as of fee: And the said R. H. the now plaintiff further says, that after the making of the said letters patent to the said E. B. and W. W. as aforesaid, and after the making of the said indenture of bargain and sale by and between the said E. B. and W. W. and the said W. P. bearing date the said twentieth day of June, in the said twenty-first year of the reign of the said late king James, the said E. B. and W. W. being and remaining seised of the residue of the said vaccary, with the appurtenances, mentioned in the said last-mentioned letters patent, and not included within the said last-mentioned indenture, or thereby granted to the said W. P. in their demesne as of fee before the said several times when, &c. to wit, on, &c. at, &c. by a certain indenture of bargain and sale then and there made between the said E. B. W. W. and one J. W. and one H. F. of the second part (one part, &c.) in consideration of a certain sum of money in the said last-mentioned indenture mentioned, and in hand paid by the said J. W. and H. F. to the said E. B. and W. W. the said E. B. and W. W. did grant, bargain, and sell unto the said J. W. and H. F. their heirs and assigns for ever, all that one half part, purparty, portion, and parcel of the said vaccary within the forest of W. in the said county of L. called L. then or late in the tenure of one R. H. and one G. H. of the yearly rent of one pound three shillings and fourpence, late parcels of the lands and possessions of the said dutchy of L. and all and singular messuages, mills,

And the plaintiff further says, that after letters patent E. B. and W. W. after bargain and sale by them to W. P. they being seised of the residue of the said vaccary, by indenture of bargain and sale between E. B. and W. W. and J. W. and H. F. they bargained and sold for a year, the other purparty, being the residue of the said vaccary.

mills, &c. &c. and all and singular warrens, &c. whatsoever, with all their appurtenances of whatsoever kind, value, or fort, or by whatsoever name or names they might be known, reputed, called, or named, to the said vaccary called Leigh, or to any part or parcel thereof in any manner belonging, appertaining, or appending (not given and granted by the said E. B. and W. W. to the said W. P. in and by the said indenture of bargain and sale so made by the said E. B. and W. W. to the said W. P.) and that in as full and ample a manner as the said lord king James by his said letters patent, as well under the great seal of England as under his seal of his county palatine of L. and the seal of his said dutchy of L. bearing date the twenty-first day of March, in the said twentieth year of his reign, had given and granted the said last-mentioned premises, with the appurtenances, in the said last-mentioned indenture expressed and specified (among other things) to the said E. B. and W. W. their heirs and assigns in fee farm for ever; to have and to hold to the said J. W. and H. F. their executors, administrators, and assigns, from the day next before the day of the date of the said last-mentioned indenture for one year then next following, as by the said last-mentioned indenture may more fully appear; by virtue of which said bargain and sale, and by force of the statute made for transferring uses into possession, the said J. W. and H. F. were possessed of the said last-mentioned premises, with the appurtenances, for the term of one year afore said; and being so thereof possessed the said J. W. and H. F. afterwards, and before the said several times when, &c. to wit, on, &c. A.D. 1632, at, &c. in, &c. by a certain other indenture then and there made between the said E. B. and W. W. of the one part, and the said J. W. and H. F. of the other part (one part of, &c.) for and in consideration of a certain sum of lawful money of Great Britain in the said last-mentioned indenture mentioned, to them in hand paid by the said J. W. and H. F. did grant, release, and confirm unto the said J. W. and H. F. their heirs and assigns, the said last-mentioned premises, with the appurtenances, to hold the same unto the said J. W. and H. F. their heirs and assigns for ever, as by the said last-mentioned indenture, reference being thereunto had, may more fully appear; by virtue of which said last-mentioned indenture, and by force of the statute made for transferring uses into possession, the said J. W. and H. F. were seised of the said last-mentioned premises, with the appurtenances, in their demesne as of fee; and being so seised they the said J. W. and H. F. afterwards, and before the said several times when, &c. to wit, on, &c. at, &c. by a certain indenture of bargain and sale then and there made between the said J. W. and H. F. of the one part, and one A. B. of the second part (one part, &c.) in consideration of a certain sum of money in the said last-mentioned indenture mentioned, and in hand paid by the said A. B. to the said J. W. and H. F. they the said J. W. and H. F. did grant, bargain, and sell unto the said A. B. his heirs and assigns for ever, all the said last-mentioned premises, with the appurtenances, to hold the same unto and to the use of the said

The premises
not granted to
W. P.

Habendum for a
year;

by virtue where-
of they were
possessed.

E. B. and W. W.
released in fee;

by virtue where-
of they were
seised in fee;

and being so
seised, they con-
veyed to H. F.
by a similar con-
veyance;

A. B. his executors, administrators, and assigns, from the day next before the day of the date of the said last-mentioned indenture, for one year then next following, as by the said last-mentioned indenture may more fully appear; by virtue of which said last-mentioned bargain and sale, and by force of the statute made for transferring uses into possession, the said A. B. was possessed of the said last-mentioned premises, with the appurtenances, for the term of one year aforesaid; and being so thereof possessed the said J. W. and H. F. afterwards, and before the said several times when, &c. to wit, on, &c. at, &c. by a certain other indenture then and there made between the said J. W. and H. F. of the one part, and the said H. F. of the other part (one part of, &c.) for and in consideration of a certain sum of lawful money of Great Britain, in the said last-mentioned indenture mentioned, to them in hand paid by the said A. B. the said J. W. and H. F. did grant, release, and confirm unto the said A. B. his heirs and assigns, the said last-mentioned premises, with the appurtenances, to hold the same to the said A. B. his heirs and assigns for ever, as by the said last-mentioned indenture, reference being thereunto had, may more fully appear; by virtue of which said last-mentioned indenture, and by force of the statute made for transferring uses into possession, the said A. B. was seised of the said last-mentioned premises, with the appurtenances, in his demesne as of fee; and being so seised thereof he the said A. B. afterwards, and before the said several times when, &c. to wit, on, &c. at, &c. in, &c. by a certain indenture of bargain and sale then and there made between the said A. B. of the one part, and the said R. H. of the other part (one part of, &c.) in consideration of a certain sum of money in the said last-mentioned indenture mentioned, and in hand paid by the said R. H. to the said A. B. he the said A. B. did grant, bargain, sell, enfeoff, and confirm unto the said R. H. his heirs and assigns for ever, all that part, purparty, portion, and parcel of the said vaccary within the said forest of W. in the county of L. called Leigh, late in the tenure of the said last-mentioned R. H. of the yearly rent of eleven shillings and eightpence, late parcel of the lands and possessions of the said duchy of L. with the appurtenances, and being part and parcel of the said premises so given and granted by the said E. B. and W. W. to the said J. W. and H. F. to hold the same unto and to the use of the said R. H. his heirs and assigns for ever, as by the said indenture, reference being thereunto had, may more fully appear, which said indenture afterwards, and within the six months next after the date thereof, to wit, on, &c. according to the form of the statute in such case made and provided, duly enrolled before A. B. then prothonotary of the county palatine of Lancaster, and one of the justices of the then lord the king assigned to keep the peace in the said county palatine of L.; by virtue of which said bargain, and sale, and enrollment, and by force of the statute made for transferring uses into possession, the said R. H. was seised of the said premises, with the appurtenances, in the said last-mentioned indenture of bargain and sale expressed

by virtue where-
of H. F. was
seised, and being
so conveyed by
bargain and sale
to H. of the
forest of W. half
of his property,

which was in-
rolled in the
county palatine.

expressed and specified, in his demesne as of fee: And the said R. H. the now plaintiff further says, that the said A. B. being so seised of the premises, with the appurtenances, so granted, bargained, and sold by the said J. W. and H. F. to the said A. B. not expressed and specified in the said indenture of bargain and sale bearing date on, &c. and thereby granted by the said A. B. to the said R. H. did afterwards, and before the said several times when, &c. to wit, on, &c. at, &c. in, &c. by a certain indenture then and there made between the said A. B. of the one part, and the said R. H. on the other part (one part, &c.) for and in consideration of a certain sum of lawful money of Great Britain, in the said last-mentioned indenture mentioned, and to the said A. B. then and there in hand paid by the said R. H. at or before the execution thereof, the said A. B. did grant, bargain, and sell unto the said last-mentioned R. H. his executors, administrators, and assigns, all that remaining one-fourth part, purparty, portion, or parcel of the said vaccary within the forest of W. in the county of L. called Leigh, then or late in the tenure of the said G. H. of the yearly rent of eleven shillings and eight-pence, late parcel of the lands and possession of the said duchy of L. together with all and singular messuages, mills, &c. meadows, &c. and all and singular free warrens, mines, &c. with all their appurtenances of whatsoever kind, nature, or sort, or by whatsoever name or names they might be known, reputed, called, or named, to the said one-fourth part, purparty, portion, or parcel of the said vaccary, or to any part or parcel thereof in any manner belonging, appertaining, or appending, together with all and singular the free warrens, mines, &c. with all their appurtenances of whatsoever nature or sort, or by whatsoever name or names they might be known, reputed, called, or named, to the said vaccary called Leigh, or to any part or parcel thereof, in any manner belonging, appertaining, or appending, not given and granted by the said E. B. and W. W. to the said W. P. in and by the said indenture of bargain and sale so made between the said E. B. and W. W. and the said W. P. or by the said A. B. to the said R. H. in and by the said indenture of lease and release so made by and between the said A. B. and the said R. H. to have and to hold to the said R. H. from the day next before the day of the date of the said last-mentioned indenture, for one year then next following, as by the said indenture may more fully appear; by virtue of which said bargain and sale, and by force of the statute made for transferring uses into possession, the said R. H. was possessed of the said last-mentioned premises, with the appurtenances, for the term of one year aforesaid; and being so thereof possessed the said A. B. afterwards, to wit, on, &c. at, &c. in, &c. by a certain other indenture then and there made between the said A. B. of the one part, and the said R. H. of the other part (one part of, &c.) for and in consideration of a certain sum of lawful money of Great Britain, in the said last-mentioned indenture mentioned, to him in hand paid by the said R. H. did grant, release, and confirm unto the said R. H. and his heirs

A. B. being seised of the residue of his purparty, granted same by lease and release to R. H. the remaining fourth part of the said vaccary.

heirs the said last-mentioned premises, with the appurtenances, to hold the same to the said R. H. his heirs and assigns for ever, as by the said indenture, reference being thereunto had, may more fully appear; by virtue of which said last-mentioned indenture, and by force of the statute made for transferring uses into possession, the said R. H. became and was seised of the said last-mentioned pre-

And being so
seised of the
whole vaccary
R. H. died;

after whose death
it descended to
his son T. H.

who became seised
and died, af-
ter whose death
it descended to
R. H. his son,
the grandfather
of the plaintiff;
who became seised
and died, when
it descended to
his son; who
became seised
and died, when
it descended to
plaintiff his son;

who became and
was at the said
time when, &c.
seised in fee, and
being so did
hunt for hares in
the said vaccary,
and hunted and
pursued them
out of it to the
said places in
which, &c. till
defendant shot
the dogs, &c.

misés, with the appurtenances, in his demesne as of fee; and being so seised of the whole of the said vaccary called Leigh, with all the liberties, franchises, free warrens, and appurtenances, so given and granted by the said lord the king James by his said letters patent, bearing date, &c. in the twentieth year of his reign afore-
said to the said E. B. and W. W. their heirs and assigns for ever, the said R. H. afterwards, and before the said several times when, &c. to wit, on, &c. at, &c. in, &c. died so seised, after whose death the said vaccary called Leigh, with all the said liberties, franchises, free warrens, and appurtenances, descended and came to one T. H. as son and heir of the said R. H. by means whereof the said T. H. became and was seised thereof in his demesne as of fee; and being so seised thereof the said T. H. afterwards, and before the said several times when, &c. to wit, on, &c. at, &c. in, &c. died so seised thereof, after whose death the said vaccary called Leigh, with all the said liberties, &c. descended and came to the said R. H. the grandfather of the now plaintiff, as son and heir of the said T. H. by means whereof the said R. H. the grandfather became and was seised thereof in his demesne as of fee; and being so seised thereof he the said R. H. the grandfather afterwards, and before the said several times when, &c. to wit, on, &c. at, &c. in, &c. died so seised, after whose death the said vaccary called L. with all the said liberties, &c. descended and came to one N. H. as son and heir of the said R. H. the grandfather; by means whereof the said N. H. became and was seised in his demesne as of fee; and being so seised thereof the said N. H. afterwards, and before the said several times when, &c. to wit, on, &c. at, &c. in, &c. died so seised, after whose death the said vaccary called L. with all the said liberties, &c. descended and came to the said R. H. the now plaintiff, as son and heir of the said N. H.; by means whereof the said R. H. the now plaintiff afterwards, and before the said several times when, &c. became and was seised thereof in his demesne as of fee: And the said R. H. the now plaintiff further says, that he being so seised thereof he the said R. H. the now plaintiff, at the said several times when, &c. in the said declaration in that behalf respectively mentioned, did hunt for hares in the said vaccary called L. with certain hunting dogs and bitches, whereof the said dogs and bitches in the said declaration respectively mentioned were parcel, to wit, at, &c. in, &c. and that being so hunting in the said vaccary the said dogs and bitches did then and there find and put up within the said vaccary a certain hare then and there being, and did then and there hunt, pursue, and chase the said hare in certain parts and places in the said vaccary lying near unto the said several places in which, &c. and the said dogs and bitches so hunt-
ing

ing and pursuing the said hare, the said hare then and there run out of the said vaccary into the said places in which, &c. and the said dogs and bitches in their said pursuit did pursue and follow the said hare out of the said vaccary, and did enter into and hunt and chase the said hare in the said several places in which, &c. at the said several times when, &c. until the said defendant did then and there with force and arms, &c. of his own wrong shoot off and discharge the said respective guns in the said declaration mentioned, at, and towards, and against the said dogs and bitches therein mentioned, whilst they were so chasing and hunting the said hare there, and did then and there strike and wound the said respective dogs and bitches in the said declaration mentioned, in manner and form as the said R. H. the now plaintiff, hath above thereof complained against him, and the said R. H. the now plaintiff, avers that the said hare in the said plea secondly above pleaded in bar, and in this replication above mentioned are one and the same hare, and not other or different, and this, &c.; wherefore, &c.; if &c.

Avers that the hare in the plea and replication mentioned are the same.

SAMUEL HAYWOOD.

For that the said plaintiff hath not by his said replication set forth any lawful or sufficient cause for chasing or pursuing the said hare with the said dogs and bitches. or any of them in the said forest, and out of the said warren of the said plaintiff there; and also for that the said replication is argumentative and informal in this, that the said plaintiff hath not confessed and avoided, or traversed, or denied the facts alledged in the said last plea; that the said dogs and bitches at the said time when, &c. were in the forest of W. and that they were then chasing a hare belonging to our said the king and to his said forest there, but hath only attempted to deny those facts by argument and inference, and for that the said replication contains no direct or sufficient answer to the said last plea of the said defendant, and is in other respects informal and insufficient.

Causes of demurrer to the last replication. 1st has not shown good cause for chasing the hare in the forest. 2d has not traversed that fact, but attempted to deny it by inference. 3d that replication is not a direct answer to the last plea.

A. CHAMBRE.

Plaintiff obtained a verdict.

PEAKE
against
WHITMASH, ESQUIRE. } KENT, to wit. George Peake
complains against Jonathan Whit-
math, esquire, being, &c. for that
the said Jonathan, on the sixteenth of September 1779, with force and arms broke and entered a certain booth of the said George erected, standing, and being in the parish of Looe, in the said county of Kent, and broke down, prostrated, and destroyed the said booth, and the goods and chattels, to wit, one box containing two notes of the Governor and Company of the Bank of England of the value of ten pounds each, and cash in gold, silver, and copper to the amount of forty pounds, four butts of strong beer, six cags of brandy, containing five gallons each, six cags of geneva, containing five gallons each, six cags of rum,

Declaration for destroying a booth and seizing goods, &c.

TRESPASS TO PERSONAL PROPERTY—PLEA—

rum, containing five gallons each, and ten dozen bottles of wine of the said George of the value of one hundred pounds in his said booth, then being and found, seized, took, carried away, damaged and spoiled, and converted and disposed thereof to his own use; and also for that the said Jonathan afterwards on, &c. at, &c. with force and arms, other goods and chattels, to wit, one other box, containing two other notes of the Bank of England of the value of ten pounds each, and other cash of gold, silver, and copper to the amount of ten pounds, four other butts of strong beer, six other cags of brandy, containing five gallons each, six other cags of geneva, containing five gallons each, six other cags of rum, containing five gallons each, and other ten dozen bottles of wine of the said George of the value of one hundred pounds, then and there being, and found, seized, took, carried away, damaged, and spoiled, and converted and disposed thereof to his own use, and other wrongs to the said George then and there did to the great damage of the said George, and against the peace of our lord the present king, whereupon the said George saith he is injured and hath damages to the value of two hundred pounds; and therefore he brings suit, &c. Pledges, &c.

Plea, general
issue.

ad Plea.

And the said Jonathan, by John Berry his attorney, comes and defends the wrongs and injuries when, &c. and says he is not guilty of the premises above laid to his charge, in manner and form as the said George hath above thereof complained against him, and of this he puts himself upon the country, &c. and the said George doth the like: And for further plea in this behalf as to the breaking and entering the said booth, and breaking down, throwing down, prostrating, and destroying the same, and the goods and chattels in the said first Count of the said declaration mentioned seizing, taking, carrying away, damaging, and spoiling, and also as to the seizing, taking, carrying away, damaging, and spoiling the goods and chattels in the said second Count of the said declaration mentioned above supposed to have been done by the said Jonathan, he the said Jonathan by leave, &c. *alio non*; because he says, that the goods and chattels in the said first Count of the said declaration mentioned, and the said goods and chattels in the said second Count of the said declaration mentioned, are one and the same goods and chattels, and not other or different, that is to say, at the parish aforesaid, in the said county; and the said Jonathan further says, that the said place where the said booth in the said declaration mentioned at the said time when, &c. was erected, standing, and being, was part of a certain heath or common called Coxheath, situate and being in the said parish aforesaid, which part of the said heath or common whereon the said booth was erected at the said time when, &c. was, and from time whereof the memory of man is not to the contrary hath been parcel of and within the manor of Loose, in the said county, and which said manor before and at the said time when, &c. was and still is the soil and freehold of the dean and

the booth mentioned in declaration: was erected on Coxheath. Coxheath with in the manor of L.

chapter of Christ Church in Canterbury, and because the said George had a little before the said time when, &c. without the leave and against the will and consent of the said dean and chapter, erected and placed the said booth in and upon the said part of the said waste or common, and because the same booth at the said time when, &c. was wrongfully and injuriously erected, standing, and being in and upon the said part of the said waste or common, and because the said George had a little before the said time when, &c. without the leave or licence, and against the will and consent of the said dean and chapter, brought and placed the said goods and chattels in the said declaration mentioned in the said booth, and the same were at the said time when, &c. wrongfully and injuriously thereon, he the said John, at the said time when, &c. as servant of the said dean and chapter, and by their command, entered the said booth, and pulled down the same, and removed and carried the materials thereof coming, and the goods and chattels in the said declaration mentioned to a convenient distance from the place where the said booth and goods and chattels were, and laid and deposited the same in proper and convenient places near to the said place where the said booths stood, and there left the same for the use of the said George as he lawfully might for the cause aforesaid, and in so doing the said John did necessarily and unavoidably a little damage the soil and destroy the same materials, goods, and chattels, doing as little damage as he possibly could on that occasion, which are the same breaking and entering, &c. whereof, &c.; and this, &c.; wherefore, &c.: And for further plea in this behalf as to the breaking and entering, &c. by like leave, &c. (*actio non*); because that the goods and chattels in the said first Count of the said declaration mentioned, and the said goods and chattels in the said second Count of the said declaration mentioned, are one and the same goods and chattels, and not other or different, that is to say, at the parish aforesaid; and that before and at the said time when, &c. a certain army of our said lord the king consisting of divers, to wit, twelve thousand soldiers and subjects of our said lord the king, was by the authority and command of our said lord the king duly encamped in and upon a certain common or heath called Coxheath, in the county of Kent, part of such common or heath situate and being within the said parish of Loose, in the said county of Kent, under and subject to the command of Richard Pierton, esquire, the general and commander thereof, as well in order that the said army might be duly trained to arms, exercised, and disciplined, as for the safeguard and defence of this realm against the enemies of Great Britain: And the said John further says, that after the said army had been so encamped as aforesaid, and during the time that it remained there encamped as aforesaid, to wit, on the day and year in the said declaration mentioned, he the said George erected and built, and caused and procured to be erected and built the said booth in the said declaration mentioned, in and upon part of the said common or heath in the parish of Loose aforesaid, and within the limits of the said encampment, and then

and because plaintiff had, against the will of the dean and chapter, erected the booth, and brought the goods,

defendant, as their servants, pulled same down.

3d Plea

The king's army was encamped on Coxheath.

Plaintiff erected the booth within the encampment as a sitting booth.

TRESPASS.—PLEA OF JUSTIFICATION BY—

That riots, &c.
happened in the
booth.

Whereupon the
defendant was
ordered by the
general to pull
it down.

4th Plea.

Army encamp-
ed.

and there opened the said booth as a putting booth for the sale of victuals and liquors to the soldiers of the said army, and kept and continued, and caused to be kept and continued open the said booth, there as a putting booth as aforesaid, until and at the said time when, &c. : And the said John further says, that a little before the said time when, &c. to wit, on the day and year aforesaid, great affrays, riots, disorders, and disturbances had happened, been made, and stirred up by and between certain soldiers of the said army, by reason of their frequenting and coming together at the said booth, and certain other booths and huts then and there also erected, standing, and being on the said common, and within the limits of the said encampment, and by reason of certain disorderly courses and practices permitted by the said George to be carried on and followed by such soldiers in said booth of the said George, and more affrays, riots, disorders, and disturbances of the same nature were likely to ensue, unless the said booth of the said George, and the said other booths were pulled down and removed, to the great annoyance of the said army, to the subversion of good order, discipline, and government therein, and in breach and violation of the peace of our lord the king, whereupon the said John, at the said time when, &c. as servant of the said Richard Pierfon to them then being the governor and commander of the said army as aforesaid, and by his command at the said time when, &c. in order to restore and preserve the peace, good government, discipline, and subordination of the said army, necessarily at the said time when, &c. broke down, threw down, and prostrated the said booth of the said George, and the materials thereof coming, and the said goods and chattels then being and found in the said booth, took, carried away, and removed to a convenient place near to the said booth in the parish aforesaid, and there left the same for the use of the said George as he lawfully might for the cause aforesaid, and in so doing he the said John, at the said time when, &c. did necessarily and unavoidably a little damage and spoil the said booth, goods, and chattels, doing as little damage as he possibly could on the occasion last aforesaid, which are the same breaking and entering, &c. whereof, &c. ; and this, &c. : wherefore &c. : And for further plea in this behalf as to the breaking, &c. by like leave, &c. *ad hoc non* ; because he says, that the said goods and chattels in the said first Count of the said declaration mentioned, and the said goods and chattels in the said second Count of the said declaration mentioned, are the same goods and chattels and not other or different, that is to say, at the parish aforesaid : And the said John further says, that before and at the said time when, &c. a certain army or our said lord the king consisting of divers, to wit, twelve thousand soldiers and subjects of our said lord the king, was by the authority and command of our said lord the king duly encamped in and upon a certain common or heath called Coxheath, in the said county of Kent, part of such common or heath being situate in the parish of Leafe, in the said county of Kent, under and subject to the command of Richard Pierfon, esquire, the general and commander

mander thereof, as well in order that the said army might be duly trained to arms, exercised, and disciplined, as for the safeguard of this realm against the enemies of Great Britain: And the said John further says, that after the said army had been encamped as aforesaid, and during that time it remained there encamped as aforesaid, to wit, on the day and year in the said declaration mentioned, he the said George erected and built, and caused and procured to be erected and built the said booth in the said declaration mentioned, in and upon the said common or heath in the parish of Loose aforesaid, and within the limits of the said encampment, and then and there opened the said booth as a futtling booth for the sale of victuals and liquors for the soldiers of the said army, and kept and continued, and caused to be kept and continued open the said booth as a futtling booth as aforesaid, until and at the said time when, &c.: And the said John further says, that the said George, long before and at the said time when, &c. did keep, maintain, and continue an ill-governed and disorderly booth, and in his said booth, for his own lucre and gain, did unlawfully and wilfully cause and procure divers soldiers and subjects of the said army under the command of the said Richard Pierfon as aforesaid, contrary to the will of the said Richard Pierfon, to frequent and come together at the said booth as well in the night as in the day time, and to meet and assemble with divers lewd and disorderly women at the said booth, and there to remain drinking, tippling, whoreing, and misbehaving themselves, and raising riots, affrays, and disturbances, to the great annoyance of the said army, to the subversion of good order, discipline, and government therein, and in breach and violation of the peace of our said lord the king; whereupon the said John, at the said time when, &c. as servant of the said Richard Pierfon, so then being the general and commander of the said army as aforesaid, and by his command at the said time when, &c. in order to restore and preserve the peace, good government, discipline, and subordination of the said army, necessarily at the said time, &c. broke down, threw down, and prostrated the said booth of the said George, as he lawfully might for the cause aforesaid, and the materials thereof coming, and the goods and chattels in the said booth there being and found, took and carried away and removed to a convenient place near to the said booth in the parish aforesaid, and there left the same for the use of the said George, as he lawfully might for the cause aforesaid, and in so doing he the said John, at the said time when, &c. did necessarily and unavoidably a little damage and spoil the said booth, goods, and chattels, doing as little damage as he possibly could on that occasion, which are the same breaking, &c. whereof, &c.; and this, &c.; wherefore, &c.

Plaintiff erected a futtling booth.

Plaintiff kept a disorderly booth, and permitted disorderly women therein,

whereupon, &c.

GEO. WOOD.

And the said George, as to the said plea of the said John by him secondly above pleaded in bar as to the breaking and entering, &c. *precludi non*; because he saith, that true it is that the said place where the said booth in the said declaration mentioned, when,

Replication, admits booth to be erected on Coxheath.

G 2

&c.

TRESPASS.—TENANT AGAINST LANDLORD.

and that it is
within the ma-
nor of Q.

*De injuria sua,
&c.*

3d Plea, *De in-
juria, &c.*

&c. was erected, standing, and being, was part of a certain heath or common called Coxheath, situate and being in the parish aforesaid, which part of the said heath or common whereon the said booth was erected at said time when, &c. was from time whereof the memory of man is not to the contrary, and hath been parcel of and within the manor of Loose, in the said county; and which said manor, before and at the said time when, &c. was and still is the soil and freehold of the dean and chapter of Christ Church in Canterbury, as the said George hath in that plea above alledged; but the said George further saith, that the said John, at the said time when, &c. of his own wrong, and without the residue of the causes by the said John in that plea above alledged, broke and entered the said booth, and broke down, threw down, prostrated, and destroyed the same, and the goods and chattels in the said declaration mentioned seized, took, carried away, damaged, and spoiled, in manner and form as the said George in his aforesaid declaration hath above complained against, and this he prays may be enquired of by the country; and the said John doth the like: And the said George, as to the said plea of the said John by him thirdly above pleaded in bar as to the breaking, &c. *precludi non*; because he saith, that the said John, at the said time when, &c. of his own wrong, and without any such cause as is by the said John in that plea above alledged, broke and entered the said booth, and broke down, threw down, prostrated, and destroyed the same, and the goods and chattels in the said declaration mentioned seized, took, carried away, damaged, and spoiled, in manner and form as the said George hath in his aforesaid declaration above complained against him; and this he prays may be enquired of by the country; and the said John doth the like. [Same replication to last plea.]

This cause was tried at Lent assizes 1780, when plaintiff obtained a verdict with five pounds damages.

Hilary Term, 27. Geo. III.

Declaration in
trespass by te-
nant against his
landlord, for di-
straining when
no rent was due,
to recover dou-
ble the value of
the goods di-
strained under
2. W. & M. c.
5. f. 5.

DIX
against
CHAFFIN.

SOMERSET'S HIRE, to wit. Richard Dix complains against John Chaffin being, &c.; for that the said John, on the thirtieth of September 1786, and on divers days and times between that day and the day of exhibiting the bill of the said Richard, with force and arms broke and entered divers messuages, barns, stables, yards, out-houses, and closes of the said Richard, situate, lying, and being at Haydon and at Easton, in the out parish of St. Cuthbert in Wells, in the said county of Somerset, and then and there with his feet in walking trod down, trampled upon, consumed, and spoiled the grass, clover, and corn, to wit, wheat, rye, barley, oats, pease, and beans of the said Richard then and there growing and being in the said closes of the said Richard of the value of five pounds of, &c. and then and there seized, took, and distrained as
and

TRESPASS TO PERSONAL PROPERTY.

and for a distress for rent then and there pretended and claimed by the said John to be due and in arrear from the said Richard to the said John divers cattle, goods, and chattels of the said Richard, that is to say, four horses, four mares, four geldings, four bulls, four cows, four oxen, twenty sheep, ten stacks of hay, ten ricks of hay of the value of one hundred pounds, and the said cattle, goods, and chattels so as aforesaid seized, taken, and distrained, led, drove, and carried the same away, and sold, converted, and disposed thereof, and the monies arising therefrom to his own use, when in truth and in fact no rent was due and in arrear from the said Richard to the said John, at the time of the taking of the said goods and chattels as aforesaid, to wit, in the parish aforesaid, in the county aforesaid; by reason and means of all which said premises, he the said Richard hath been deprived of the use, benefit, and advantage of the said horses, mares, geldings, and oxen, and hath for want of the same horses, mares, geldings, and oxen, been prevented and hindered from ploughing, cultivating, and tilling the said close, and other closes, lands, and premises in this the said Richard's occupation and possession, and hath thereby lost and been deprived of divers great gains, profits, and advantages which he would have otherwise received and enjoyed, and hath otherwise been greatly injured and prejudiced by reason of the premises, to wit, at, &c. : And also for that the said John, on the same day and year aforesaid, at, &c. with force and arms, seized and took other the cattle, goods, and chattels of the said Richard, that is to say, four other horses, &c. &c. of the value of other one hundred pounds, there then also found and being, and led, drove, and carried away the same, and converted and disposed thereof to his own use, and other wrongs to the said Richard then and there did, against the peace of our said lord the now king, and to the damage, &c. Pledges, &c.

Drawn by MR. CROMPTON.

Verdict for plaintiff value of goods distrained.

NORFOLK, to wit. W. B. late of, &c. was attached to answer H. A. of a plea; wherefore with force and arms he drove and chased a mare big with foal of the value of twenty pounds of the said plaintiff, being at a certain place called, &c. in the district and township of F. in the county aforesaid, whereby the said mare slipped a dead foal, and whereby the said mare was hurt and greatly damaged, and the said plaintiff was thereby greatly deprived of the use of the said mare for a long space of time; and also wherefore he the said defendant, with force and arms, in, &c. aforesaid, drove and chased another mare of the said defendant of the value of other twenty pounds, with violence from place to place, and to divers unwholesome and quaggy places, whereby the said last-mentioned mare dropped a dead foal, and whereby the said last-mentioned mare was greatly hurt and damaged, and the said plaintiff was thereby deprived, &c. and other wrongs, &c. and whereupon, &c. [Set out the Declaration.]

Declaration in C. B. trespass, for hunting a mare, whereby she dropped a dead foal.

Pleathereto, 1st,
general issue;
ad, that the mare
was in defend-
ant's ground
doing damage,
therefore he
drove same to a
certain place
near thereto for
the plaintiff.

2d Plea, that the
plaintiff's mare
was eating up
grass in defend-
ant's close,
wherefore he
gently drove it
out to impound
it.

1st, General Issue: And for further plea in this behalf as to the driving and chasing the said mare big with foal in the said first Count of the said declaration mentioned, and also as to driving and chasing the said mare of the said plaintiff from place to place in the last Count of the said declaration mentioned above supposed, &c. &c. (*adlio non*); because he says, that the said mare in the said first Count of the said declaration mentioned, and the said mare in the said last Count of the said declaration mentioned, are one mare, and not different mares, and that the driving in the first Count, and the driving from place to place in the last Count, are the same driving, and the times in the first and last Counts are the same time: And the said defendant further says, that long before and at the said time when, &c. in the said declaration mentioned, he the said defendant was lawfully possessed of a certain close or piece of fen ground called, &c. situate, lying, and being in the parish of, &c. in, &c. and because the said mare in the said declaration mentioned a little before the said time when, &c. wrongfully and against the will of the said defendant, entered into the said close or piece of fen ground of the said defendant, and at the said time when, &c. was doing damage to the said defendant there, he the said defendant, at the said time when, &c. drove and chased the said mare in the said declaration mentioned out of the said close or piece of fen ground of him the said defendant, to a certain place near thereto in the district and township aforesaid, and there left the same for the use of the said plaintiff as it was lawful for him the said defendant to do for the cause aforesaid, which are the same trespasses in the introduction to this plea mentioned, whereof the said plaintiff hath above thereof complained against him the said defendant; and this, &c.; wherefore, &c.: And for further plea as to, &c. &c. (*adlio non*); because he says, &c. [as before]: And the said defendant further says, that he the said defendant, long before and at the said time when, &c. in the said declaration mentioned, was lawfully possessed of and in a certain piece or parcel of fen ground called, &c. situate, &c. and being so thereof possessed; and because the said mare in the said declaration mentioned, at the said time when, &c. was in the said last-mentioned close or piece of ground of the said defendant, eating up, depasturing, treading down, consuming, and spoiling the grass of the said defendant, then growing and being in the said last-mentioned close of the said defendant, and doing damage there to the said defendant, he the said defendant, at the said time when, &c. gently drove and chased the said mare in the said declaration mentioned out of the said last-mentioned close or piece of fen ground of him the said defendant, with an intent to impound the said mare in a certain common and open pound in the aforesaid county for the aforesaid damage, as he the said defendant lawfully might do for the cause last aforesaid, which are the same, &c.; and this, &c.; wherefore, &c.

W. C. BOLTON.

Replication, *de injuria sua*, &c.

— J. N.

TRESPASS TO PROPERTY—(ENTERING DWELLING-HOUSE)—PLEA.

— J. N. complains of R. D. ; for that the said defendant, together with divers other persons at present unknown to the said plaintiff, on, &c. with force and arms, &c. broke and entered a certain house of him the said plaintiff called the Dovecote, situate and being at, &c. in, &c. and forced and wrenched open the doors, to wit, two doors of and belonging to the said dovecote, and the locks and bolts wherewith the said doors were fastened, locked, and bolted, then and there broke to pieces, spoiled, and destroyed, and the doves and pigeons, to wit, one hundred pair of doves and one hundred pair of pigeons of the said dovecote of the said plaintiff then and there being and found of the price of twenty pounds, with nets, engines, snares, and other instruments, caught, seized, took, and carried away, and converted and disposed thereof to their own use, whereby the said plaintiff wholly lost a flight of his dovecote, and other wrongs, &c.

Declaration for breaking and entering a dovecote, and taking thereof doves.

Drawn by MR. CROMPTON.

Hilary Term, 28. Geo. III.

MARY DONE, widow, complains of David Ackerley being, &c. for that the said David, on, &c. with force and arms, &c. broke and entered a certain messuage or dwelling-house of the said Mary, situate and being in the parish of, &c. and then and there made a great noise, disturbance, and affray therein, and stayed and continued in the said messuage or dwelling-house making such his noise, disturbance, and affray therein, without the licence or consent, and against the will of the said Mary for a long time, to wit, for the space of six hours, and thereby for and during all that time there greatly disturbed and disquieted the said Mary and her family in the peaceable and quiet possession, use, occupation, or enjoyment of her said messuage and dwelling-house, and then and there seized and took the household furniture, goods, and chattels, to wit, one hundred chairs, &c. &c. of the said Mary of a large value, to wit, of the value of three hundred pounds there found and being in the said messuage or dwelling-house, and kept and detained the same for a long space of time, to wit, for the said space of six hours, and until she the said Mary was forced and obliged to, and did then and there pay for the use of the said David a large sum of money, to wit, the sum of one hundred and thirty-seven pounds of lawful money of Great Britain, and other wrongs to the said Mary then and there did, against the peace of our lord the now king, and to the damage of the said Mary of one hundred pounds; and therefore she brings suit, &c.

Declaration for taking the plaintiff's goods in execution.

W. BALDWIN.

And the said David, by A. B. his attorney, comes and defends the force and injury, when, &c. and says, that he is not guilty of the trespass above laid to his charge, or any part thereof, in manner and form as the said Mary hath above thereof complained against him ; and of this he puts himself upon the country, &c. : And for further plea in this behalf as to the breaking and entering

Plea to the declaration; 1st, not guilty; 2d, that the defendant is a sheriff's officer, and that he seized the goods under a warrant.

PLEA OF JUSTIFICATION UNDER LEGAL PROCESS—

the said messuage or dwelling-house in the said declaration mentioned, and making a noise or disturbance therein, and staying and continuing in the said messuage or dwelling-house making such noise and disturbance therein for the said space of time in the said declaration in that behalf mentioned, and thereby for and during all that time disturbing and disquieting the said Mary and her family in the peaceable and quiet possession, use, occupation, and enjoyment of her said messuage or dwelling-house, and seizing and taking the said household furniture, goods, and chattels in the said declaration mentioned, and keeping and detaining the same for the space of time in the said declaration in that behalf mentioned, above supposed to have been done by the said David, he the said David, by leave of, &c. according to, &c. says (*adlio non*); because he says, before the said time when, &c. to wit, on, &c. in the twenty-seventh year of the reign of, &c. there issued out of the court of our lord the now king, before his justices of Chester, at Chester aforesaid, a certain writ of our lord the king commonly called a *testatum fieri facias* directed to the sheriff of the said city of Chester, whereby our said lord the king commanded the said sheriffs that of the goods and chattels of the said Mary in their bailiwick they should cause to be made the sum of one hundred and thirty-seven pounds, which in our said lord the king's said court, before his justices at Chester, had been awarded to David Ackerley in the said writ named, for his costs and charges by him laid out in his defence in a certain action of trespass and ejectment brought against him by one J. E. on the demise of the said Mary, and that they should have that money before our said lord the king's justices of Chester, at Chester, upon the first day of, &c. to render to the said D. A. in the said writ named for his costs and charges aforesaid, and they should have there then that writ, which said writ afterwards, and before the return thereof, and also before the said time when, &c. to wit, on, &c. was delivered to C. P. and E. B. esquires, then and at the said time when, &c. then being sheriffs of the said city of Chester to be executed in due form of law; by virtue of which said writ the said C. P. and E. B. esquires, so being sheriffs of the said city of Chester afterwards and before the return of the said writ, and before the said time when, &c. to wit, on, &c. in the twenty-seventh year aforesaid, and in the year of Our Lord 1737, at, &c. in, &c. duly made their certain warrant in writing upon the said writ, sealed with the seal of office of them the said sheriffs, directed to T. C. E. P. J. W. and to each and every of them jointly and severally (they the said T. C. &c. &c. then and at the said time when, &c. being bailiffs of the said sheriffs), and by the said warrant the said sheriffs then and there commanded them the said bailiffs that of the goods and chattels of the said Mary in their the said sheriff's bailiwick they should cause to be made to the said D. A. in the said writ named the said one hundred and thirty-seven pounds, and that they should have that money before his majesty's justices of Chester, at Chester, on, &c. to render to the said D. A. in the aforesaid writ named, for his costs and charges

Testatum fieri facias to justices at Chester.

charges aforesaid, which said warrant aforesaid, and before the said time when, &c. to wit, on, &c. at, &c. was delivered to T. C. so being such bailiff as aforesaid, to be executed in due form of law, by virtue of which said warrant he the said T. C. as such bailiff as aforesaid, and the said D. A. the defendant in his aid and assistance and by his command, for having execution of the said warrant, afterwards, and before the return of the said writ, at the said time when, &c. entered into the said messuage or dwelling-house in the said declaration mentioned, the door thereof being open, and the said messuage or dwelling-house being within the bailiwick of the said sheriff of C. and the said goods and chattels in the said declaration mentioned then being in the said messuage or dwelling-house, in order to seize and take such goods and chattels in execution under and by virtue of the said warrant, and did then and there accordingly seize and take in execution such goods and chattels, and keep and detain the same for the said space of time in the said declaration in that behalf mentioned under and by virtue of the said warrant, as they lawfully might do for the cause aforesaid, and on that occasion did respectively stay and continue in the said messuage or dwelling-house for the said time in the said declaration in that respect mentioned, and during that time did a little disturb and disquiet the said Mary and her family in the peaceable and quiet possession, use, and occupation of the said messuage or dwelling-house, which is the said supposed trespass in the introductory part of this plea mentioned, whereof the said Mary hath above complained against the said David; and this, &c.; wherefore, &c. if, &c. GEORGE WOOD.

And the said Mary, as to the said plea of the said David the defendant by him lastly above pleaded as to the several trespasses in the introductory part of that plea mentioned above acknowledged to have been done by the said David, saith, that she, by reason of any thing by the said David the defendant in that plea above alledged, ought not to be barred from having and maintaining her aforesaid action thereof against him, because she saith, that true it is that there issued out of the said court of our said lord the now king, before his justices aforesaid, the said writ of *testatum fieri factas* in the said last plea mentioned and set forth as the said D. A. the defendant hath above in that behalf alledged; yet protesting that the said D. A. in the said writ named, and the said D. A. the defendant, are one and the same person, and not divers other or different persons; protesting also that the said last-mentioned plea and said matters therein contained, in manner and form as the same are above pleaded and set forth, are not sufficient in law to bar the said Mary from having and maintaining her aforesaid action thereof against the said D. A. the defendant; for replication in this behalf the said Mary saith, that the said D. A. the defendant, at the said time when, &c. of his own wrong, and without the residue of the cause by him the said D. A. the defendant in his said last-mentioned plea above alledged, broke and entered the said

Replication, *de injuria*, and new assignment.

TRESPASS.—REPLICATION—NEW ASSIGNMENT.

said messuage or dwelling-house in the said declaration mentioned, and made a noise and disturbance therein, and staid and continued in the said messuage or dwelling-house making such noise and disturbance therein for the said time in the said declaration in that behalf mentioned, and thereby for and during all that time disturbed and disquieted the said Mary and her family in the quiet and peaceable possession, use, occupation, and enjoyment of her said messuage or dwelling-house, and seized and took the said household furniture, goods, and chattels in the said declaration mentioned, and kept and detained the same for the said space of time in the said declaration in that respect mentioned, in manner and form as the said Mary hath above thereof complained against the said David the defendant; and this she the said Mary prays may be enquired of the country, &c: And the said Mary further saith, that she exhibited her bill in this cause, and brought her said suit thereupon against the said David the defendant, not only for committing the several trespasses mentioned in the said plea lastly above pleaded, and thereby attempted to be justified in manner aforesaid, but also for that the said D. A. the defendant, and D. A. in the said writ and warrant named, were one and the same person, and that the said D. A. at the said time when, &c. at, &c. in, &c. in another and different manner than is stated in and by the said last-mentioned plea, that is to say, by then and there causing the said writ in the said plea mentioned to be issued out of the said court of our said lord the king, before his justices of Chester, at Chester aforesaid, and to be delivered to the said sheriffs of the said city of Chester, and also by then and there causing the said warrant in the said plea mentioned to be made and delivered as in the said plea is mentioned without any judgment being given in the said court to warrant the said writ, and in execution thereof broke and entered the said messuage or dwelling-house in the said declaration mentioned, and made a noise and disturbance therein, and staid and continued in the said messuage or dwelling-house making such noise and disturbance therein for the said time in the said declaration in that behalf mentioned, and thereby for and during all that time disturbed and disquieted the said Mary and her family in the peaceable and quiet possession, use, occupation, and enjoyment of her said messuage or dwelling-house, and seized and took the said household goods, furniture, and chattels in the said declaration mentioned, and kept and detained the same for the said space of time in that behalf mentioned, in manner and form as the said Mary hath above thereof complained against him; wherefore inasmuch as the said D. A. the defendant hath not answered the manner of committing the said several trespasses above anew assigned, she the said Mary prays judgment and her damages, by her sustained on occasion of the committing thereof, to be adjudged to her, &c.

WM. BALDWIN.

The rejoinder was drawn, but not settled; Mr. Lawes having advised to let plaintiff take judgment.

And

PLEA TO NEW ASSIGNMENT.

And as to the said plea of the said Mary by her above pleaded by way of reply to the said plea of the said David the defendant by him lastly above pleaded as to the several trespasses in the introductory part of that plea mentioned above supposed to have been done by the said David the defendant, and which the said Mary hath prayed may be enquired of by the country, he the said David the defendant doth the like, &c. : And as to the said trespass above new assigned, he the said David the defendant is not thereof guilty in manner and form as the said Mary hath above in that behalf alledged; and of this he puts himself upon the country, &c. : And for further plea as to the said trespasses above new assigned, and above supposed to have been committed by the said David the defendant, by causing the said writ in the said plea lastly above pleaded mentioned to be issued out of the said court of our said lord the king, before his justices of Chester, at Chester aforesaid, and to be delivered to the said sheriffs of the said city of Chester, and also by causing the said warrant in the said plea mentioned to be made and delivered as in the said plea is mentioned, and in execution thereof breaking and entering the said messuage or dwelling-house in the said declaration mentioned, and making a noise and disturbance therein, and staying and continuing in the said messuage or dwelling-house making such noise and disturbance therein for the said space of time in the said declaration in that behalf mentioned, and thereby for and during all that time disturbing and disquieting the said Mary and her family in the peaceable and quiet possession, use, occupation, and enjoyment of her said messuage or dwelling-house, and seizing and taking the said household furniture, goods, and chattels in the said declaration mentioned, and keeping and detaining the same for the said space of time in the said declaration in that behalf mentioned, he the said David the defendant, by leave of, &c. according to, &c. says (*actio non*); because he says, that although true it is that the said D. A. the defendant, and D. A. in the said writ and warrant named, are one and the same person as in the said new assignment is in that behalf alledged, yet the said D. A. the defendant in fact further saith, that before the said time when, &c. to wit, at the session of Chester, held at Chester, in the county of Chester, in the common hall of pleas of the said county, on Monday, &c. in the twenty-seventh year of, &c. before our lord the king's justices of Chester, he the said David, by the consideration and judgment of the said court, recovered against the said Mary the said sum of one hundred and thirty-seven pounds in the said writ and warrant in the said last-mentioned plea of the said David respectively mentioned, which in the said court was then and there awarded to him the said David for his costs and charges by him laid out in his defence in the said action of trespass and ejectment in the said writ, plea, and warrant mentioned whereof the said Mary was convicted, as by the record and proceedings thereof now remaining in the said court of our said lord the king, before his justices of Chester, at Chester aforesaid, more fully appears: And the said David further saith, that having so obtained such judgment

Plea to new assignment; setting out the record and proceedings.

TRESPASS.—PLEA to NEW ASSIGNMENT.

judgment as aforesaid, and the said judgment being in full force and unsatisfied, he the said David, for having execution of the said judgment at the said time when, &c. caused the writ in the said plea lastly above pleaded as aforesaid mentioned to be issued out of the said court of our said lord the king, before his justices of Chester, at Chester aforesaid, and to be delivered to the said sheriffs of the said city of Chester, and also caused the said warrant in the said plea mentioned to be made and delivered as in the said plea is mentioned, and in execution thereof did, by the said T. C. the said bailiff to whom the said warrant so delivered for execution as aforesaid, enter into the said messuage or dwelling-house in the said declaration mentioned (the door thereof being open, and the said messuage or dwelling-house being within the bailiwick of the said sheriffs of said city of Chester, and the said goods and chattels of the said Mary in the said declaration mentioned then being in the said messuage or dwelling-house), in order to seize and take such goods and chattels in execution under and by virtue of the said warrant, and did then and there by the said T. C. accordingly seize and take in execution such goods and chattels, and keep and detain the same for the said space of time in the said declaration in that respect mentioned under and by virtue of the said warrant, as he lawfully might do for the cause aforesaid, and on that occasion did, by the said T. C. necessarily stay and continue in the said messuage or dwelling-house for the said space of time in the said declaration in that respect mentioned, and during that time did a little disturb and disquiet the said Mary and her family in the peaceable and quiet possession, use, occupation, and enjoyment of the said messuage or dwelling-house, which is the said supposed trespass in the introductory part of this plea mentioned, and whereof the said Mary hath above in the said new assignment complained against him the said David; and this, &c. wherefore, &c.; if, &c.: And for further plea as to the said trespass above new assigned and above supposed to have been committed by the said David the defendant, he the said David, by like leave of, &c. according to, &c. says (*cello non*); because he says, that though true it is that the said D. A. the defendant, and D. A. in the said writ and warrant named, are one and the same person as in the said new assignment is in that behalf alledged, yet the said D. A. in fact further says, that before the said time when, &c. to wit, at the session of, &c. before, &c. the said Mary, in the name of J. E. (as nominal and fictitious plaintiff) on that occasion on the demise of the said Mary, impleaded the said defendant, the defendant in the said plea of trespass and ejectment in the said plea secondly above pleaded in bar mentioned, and such proceedings were thereupon then and there had in the said plea, that he the said David, by the consideration and judgment of the said court, then and there at the same session recovered against the said Mary the said sum of one hundred and thirty-seven pounds in the said writ and warrant in the said last-mentioned plea of the said David respectively specified, which in the said court were then and there awarded

awarded to him the said David for his costs and charges by him laid out in his defence in the said action of trespass and ejectment in the said writ and warrant mentioned, whereof the said Mary, in the name of the said J. E. the fictitious plaintiff aforesaid in the plea aforesaid, was convicted, as by record, &c. &c.: And the said David avers, that the said J. E. the plaintiff in the aforesaid plea of trespass and ejectment was not the real plaintiff or party in that suit, but was only a nominal plaintiff in the name, and that the said suit or plea was brought and instituted by the said Mary upon, and for, and on account of her the said Mary only, and that having so obtained such judgment as aforesaid, and the said judgment being in full force and unsatisfied, he the said David, for having execution of the said judgment at the said time when, &c. caused the said writ in the said plea so secondly above pleaded mentioned to be issued out of the said court of, &c. and to be delivered to the said sheriffs of the said city of, &c. and also caused the said warrant in the said plea mentioned to be made and delivered as in the said plea is mentioned, and in execution thereof did, by the said T. C. the said bailiff, to whom the said warrant was so delivered for execution as aforesaid, enter into the said messuage or dwelling-house in the said declaration mentioned (the door thereof being, &c. &c.) in order to take and seize such goods, &c. in execution under and by virtue of the said warrant, and did then and there, by the said T. C. accordingly seize and take in execution such goods, &c. and keep, &c. in the said declaration mentioned under and by virtue of the said warrant, as he lawfully might do for the cause aforesaid, and on that occasion did, by the said T. C. necessarily stay, &c. and during that time did a little disturb, &c. which is the said supposed trespass in the said new assignment mentioned, and by this plea above pleaded to; and this, &c.; wherefore, &c.; if, &c.

V. LAWES.

And the said Mary, as to the said plea of the said David by him secondly above pleaded as to the said trespass above anew assigned, and acknowledged to have been committed by the said David, saith, that she, by reason of any thing by the said David in that plea above alledged, ought not to be barred from having and maintaining her aforesaid action thereof against him, because she saith, there is no such record of the recovery against the said Mary remaining in the said court of our said lord the king, before his justices of Chester, at Chester aforesaid, as the said David hath above in his said last-mentioned plea in that behalf alledged; and this, &c.; wherefore inasmuch as the said David hath above acknowledged the committing of the said trespass above anew assigned, she the said Mary prays judgment and her damages, by her sustained on occasion of the committing thereof, to be adjudged to her, &c.: And as to the said plea of the said David by him lastly above pleaded as to the said trespass above anew assigned, and acknowledged to have been committed by the said David, the said Mary saith, that she, by reason of any thing by the said David

Replication to
plea to new assign-
ment.

TRESPASS.—REAL PROPERTY.—

in that plea above alledged, ought not to be barred from having and maintaining her aforesaid action thereof against him, because protesting that she the said Mary did not implead the said David the defendant in manner and form as the said David hath in his said last-mentioned plea in that behalf alledged: for replication in this behalf the said Mary saith, that there is no such record of the recovery against the said Mary remaining in the said court of, &c. as the said David hath above in his said last plea in that behalf alledged; and this, &c.; wherefore inasmuch as the said David hath above acknowledged the committing of the said trespass above anew assigned, she the said Mary prays judgment and her damages, by her sustained on occasion of the committing thereof, to be adjudged to her, &c.

WM. BALDWIN.

III. To REAL PROPERTY.

Declaration in trespass for and J. B. being, &c. in a plea of trespass; for that they the said defendants heretofore, to wit, on, &c. with force and arms, &c. broke and entered a certain close of the said defendant called A. situate, lying, and being in the parish of, &c. in the county of, &c. and then and there broke down, pulled down, demolished, spoiled, and destroyed a great part of the chain and fence of the said J. that is to say, fifty yards in length of the said chain and fence of the said plaintiff there then being and enclosing and fencing in the said close of the said plaintiff, and then and there trod down, trampled upon, consumed, and spoiled the grass of the said plaintiff there then growing and being, and then and there broke down, pulled down, rooted up, and destroyed the trees and shrubs of the said plaintiff, to wit, forty elm trees, &c. of the said plaintiff then standing and being in the said close of a large value, to wit, of the value of fifty pounds of lawful money of Great Britain, and other wrongs, &c. against the peace of, &c. and to the damage of the said plaintiff of one hundred pounds; and therefore he brings suit.

F. BOWER.

The injury here complained of is local, and must be laid in the proper county.

Hilary Term, 29. Geo. III.

Declaration in trespass vi et contra the person of a plea of trespass; for that the said John heretofore, to wit, on, &c. at, &c. with force and arms, &c. broke and entered, seizing his apples, entering his barn, seizing his wheat and calves, and detaining the same till he obliged plaintiff to give an undertaking in writing to pay a sum of money.

entered

LANDS, HOUSES, &c.

entered the close of the said plaintiff called the Orchard there situate, and then and there seized and took possession of divers, to wit, twenty cart load of apples then being in the said orchard, the property of the said plaintiff of a large value, to wit, of the value of fifty pounds of lawful money of Great Britain, and then and there with force and arms, &c. broke and entered the barn of the said plaintiff there also situate and being, and then and there seized and took possession of the goods, cattle, and chattels, to wit, twenty cart loads of wheat in the straw, to wit, twenty cart loads of wheat thrashed out, twenty cart loads of wheat straw, and twenty calves of the said plaintiff there then found and being in the said barn of a large value, to wit, of the value of fifty pounds of like lawful money, and he the said defendant then and there wrongfully, with force and arms, &c. kept and detained the possession of the said apples, cattle, goods, and chattels, and also of the said close and barn from thence continually for a long time, to wit, for the space of twelve hours then next ensuing, and until he the said plaintiff, to obtain a restitution of the same, was forced and obliged to sign and give, and did then and there sign and give to the said defendant an undertaking in writing to pay a large sum of money, to wit, the sum of pounds at a future day, by reason of which said premises he the said plaintiff not only suffered and was put to great inconvenience and loss of time in looking after and in procuring the said defendant to relinquish and give up the possession of his said close, barn, cattle, goods, and chattels, but also in consequence thereof divers of the neighbours and friends of the said plaintiff to whom the said trespass was known, vehemently supposed the said plaintiff to be in bad circumstances, and that he was subject by law to be distrained upon for rent in arrear, and that his property was liable to be taken in execution for debt, whereas the contrary was the fact, to wit, at, &c. : And also for that he the said defendant heretofore, to wit, on, &c. at, &c. with force and arms seized and took other the goods and chattels, to wit, twenty cart loads of wheat of the said Thomas there then found and being of a large value, to wit, of the value of one hundred pounds of like lawful money, and kept and detained the same, and converted and disposed thereof to his own use, and other wrongs to the said plaintiff then and there did, against the peace of our lord the now king, and to the damage of the said plaintiff of one hundred pounds ; and therefore, &c. T. BARROW.

I have inserted the second Count, that the plaintiff, if he recover less than forty shillings damages by taking a general verdict, may secure his costs. T. BARROW.

MIDDLESEX, to wit. George Bell complains of George Thompson being, &c. ; for that he the said G. T. together with divers other persons whose names are unknown to the said G. B. heretofore, to wit, on, &c. with force and arms, &c. broke and entered a certain messuage or dwelling-house of him the said G. B. situate in the parish of, &c. in the said county of Middle-
Declaration against defendant (and other persons unknown) for making a noise in the house of plaintiff, breaking down the stairs, &c. &c. &c.

TRESPASS TO LANDS.

sex, and then and there made a great noise and disturbance therein, and staid and continued in the said house making and continuing such noise and disturbance therein for a long space of time, to wit, for the space of four hours, and during that time there forcibly pulled down, broke down, prostrated, and destroyed a great part of the stairs, bannisters, and rails of and belonging to the said house, and took and carried away the same, and the materials thereof coming, and by reason of such several premises greatly damaged and injured the said messuage or dwelling-house of the said G. B. and rendered the same out of repair, and during all the time aforesaid interrupted and disturbed him the said G. B. in the peaceable and quiet possession of his said house, and in the exercise of his trade and business of a victualler therein: And also for that he the said G. B. afterwards, to wit, on, &c. with force and arms, &c. broke and entered a certain other messuage or dwelling-house of him the said G. B. there situate and being, and then and there made a great noise and disturbance in the same: And also for that he the said G. T. with force and arms, afterwards, to wit, on, &c. with great force and violence, pulled down, &c. the stairs, &c. of and belonging to a dwelling-house of him the said G. B. called the Cross Keys in Long Acre, and injuriously and unlawfully took and carried away the same, to wit, at, &c. to the damage of said G. B. of one hundred pounds; and therefore, &c. &c.

V. LAWES.

Declaration in
trepasses for en-
tering plaintiff's
close, making
rabbit holes, and
cutting to pieces
a net placed for
the taking of the
rabbits.

SHROPSHIRE, to wit. John Wright complains of Richard Black being, &c.; for that the said Richard heretofore, to wit, on, &c. and on divers other days and times between that day and the day of exhibiting the bill of the said John, with force and arms, &c. broke and entered a certain close of the said John situate, lying, and being in the parish of H. in the said county of S. and then and there with feet in walking, trod down, trampled upon, crushed, and spoiled the grass and corn, to wit, wheat, barley, rye, pease, beans, and oats of the said John there then growing and being in his said close of a large value, to wit, of the value of twenty pounds of lawful, &c. and then and there, by and with divers large quantities of rabbits and conies, crushed, eat up, consumed, and spoiled other the grass and corn, to wit, wheat, &c. of the said John then also growing and being in his said close of a large value, &c. of like, &c. and then and there dug, subverted, turned up, damaged, and injured the earth and soil of the said John in and of his said close, and also then and there dug and made divers, to wit, one hundred holes and burrows for rabbits and conies in the said close, and thereby then and there greatly damaged and injured the said close, and the earth and soil thereof, and incommoded and disturbed him the said John in the possession and occupation thereof, and at one of those times, that is to say, on, &c. cut to pieces, damaged, spoiled, and destroyed a certain
net

net of the goods and chattels of him the said John of a large value, to wit, of the value of five pounds of like lawful money, then and there lawfully set, laid, and placed in his said close for the catching and destruction of rabbits, doing damage there to his said close, and thereby then and there hindered and prevented him the said John from so catching and destroying the said rabbits: And also for that the said Richard afterwards, to wit, on, &c. at, &c. with force and arms, &c. cut to pieces, damaged, and wholly spoiled a certain other net of the goods and chattels of him the said John there then found and being of a large value, &c. and other wrongs to the said John then and there did against the peace of our lord the king, and to the damage of the said John of one hundred pounds; and therefore he brings his suit, &c. &c.

V. LAWES.

This trespass is local; be accurate therefore as to the parish, and if it is not in Sloughshire the *venue* must of course be changed into that county where the land lies.

On the circumstances stated this action is maintainable, and that for the trespass

in entering into plaintiff's land as well as for cutting the net, I doubt whether much will be made of the former, but if the latter can be established it will be sufficient to carry the costs, however trifling the damages.

V. LAWES.

Michaelmas Term, 23. Geo. III.

YORKSHIRE, to wit. C. H. complains of J. W. and G. W.; for that whereas they the said defendants heretofore, to wit, on, &c. and on divers other days and times between that day and the day of exhibiting the bill of the said plaintiff against the said defendants, with force and arms, &c. at, &c. in, &c. broke and entered a certain close of the said plaintiff called, &c. there situate and being, and with their feet in walking trod down, trampled upon, crushed, damaged, injured, and spoiled, as well the grass of him the said plaintiff there then growing, as also other the grass of the said plaintiff then and there being in the said close, mowed and cut down, of a large value, to wit, of the value of fifty pounds of lawful money of Great Britain in the whole: And also for that the said defendants, on and between the day first above-mentioned and the day of exhibiting of the bill of the said plaintiff against the said defendants, at, &c. with force and arms, &c. seized and took divers, to wit, one thousand gallons of water of the goods and chattels of him the said plaintiff there then found, and being of a large value, to wit, of the value of twenty pounds of like lawful money, and carried away the same, and converted and disposed thereof to their own use: And also for that the said defendants heretofore, to wit, on, &c. at, &c. with force and arms, &c. made an assault upon the said plaintiff, and then and there beat, bruised, wounded, and ill-treated him, and then and there dragged, pulled, and hauled him about from place to place there with great force and violence, and then and there flung, cast, and threw at, upon, and over him the said plaintiff, and upon and over his clothes and wearing apparel, which he then and there had on and clothed with, divers large

Declaration in trespass against defendants, for breaking into closes, mowing the grass, and carrying away the same, also taking away a large quantity of water. Assault on plaintiff, throwing water at him, spoiling his clothes, &c.

TRESPASS.—(ENTERING DWELLING-HOUSE).—

quantities of water, and rent, tore, wetted, daubed, dirtied, damaged, injured, and spoiled the said clothes and wearing apparel, consisting of one coat, &c. of a large value, to wit, of the value of ten pounds of like lawful money: And also for that the said defendants afterwards, to wit, on, &c. at, &c. made another assault upon the said plaintiff, and then and there again beat, &c. so that his life was thereby greatly despaired of, and other wrongs to the said plaintiff then and there did, against the peace of our lord the now king, and to the damage of the said plaintiff of two hundred pounds, for which he brings his suit, &c.

V. LAWES.

³⁴⁴ Declaration by attachment of privilege for defendant's entering into plaintiff's house, and staying therein for a long time, making a great noise, &c.

MIDDLESEX, to wit. Anthony Morris was attached by his majesty's writ of privilege issuing out of the court of the bench here to answer unto Henry Bacon, gentleman, one of the attorneys of his majesty's court of the bench, according to the liberties and privileges for such attorneys and other ministers of the same court from time immemorial used in a plea; wherefore with force and arms he broke and entered into a certain messuage or dwelling-house of the said Henry, situate and being in a certain street called Southampton-street, in the parish of St. Paul, Covent Garden, in the county of Middlesex aforesaid, and there made a great noise, riot, affray, and disturbance in the said messuage or dwelling-house, and remained and continued in the said messuage or dwelling-house for a long space of time, without the leave or licence, and against the will of the said Henry, making and continuing such noise, riot, disturbance, and affray, and thereby then and there greatly disturbed, disquieted, annoyed, and incommoded the said Henry and his family in the peaceable and quiet possession, use, occupation, and enjoyment of his said messuage or dwelling-house, and other injuries to the said Henry there did, to the great damage of the said Henry, and against the peace of our lord the now king; and whereupon the said Henry, in his own proper person, complains, for that the said Anthony, on the twenty-second of January 1787, with force and arms broke and entered the said messuage or dwelling-house of the said Henry, situate and being in a certain street called Southampton-street, in the parish of St. Paul, Covent Garden aforesaid, in the said county of Middlesex, and then and there made a great noise, riot, affray, and disturbance in the said messuage or dwelling-house, and then and there remained and continued in the messuage or dwelling-house making and continuing such noise, riot, disturbance, and affray for a long time, to wit, for the space of five hours then next following, without the leave or licence, and against the will of the said Henry, and thereby then and there greatly disturbed, disquieted, annoyed, and incommoded the said Henry and his family in the peaceable and quiet possession, use, occupation, and enjoyment of his said messuage or dwelling-house, and other wrongs to the said Henry then and there did, to the great damage of the said Henry, and against the peace of

PLEA—LICENCE IN LAW—(TO DEMAND DEBTS).

of our said lord the king; and wherefore the said Henry says he is injured, and hath sustained damage to the value of one hundred pounds; and therefore he brings suit, &c., Pledges, &c.

Drawn by MR. CROMPTON.

And the said Anthony, by John Marshall his attorney, comes Plea 1st, General Issue. and defends the force and injury when, &c. and says, that he is not guilty of the said supposed trespasses above laid to his charge, in manner and form as the said Henry hath above thereof complained against him; and of this the said Anthony puts himself upon the country, &c. and the said Henry doth the like: And for further plea in this behalf as to the breaking and entering of the said messuage or dwelling-house in the said declaration mentioned, and there making a great noise and disturbance in the said messuage or dwelling-house, and remaining and continuing in the messuage or dwelling-house for the space of one quarter of an hour, parcel of the said space of time in the said declaration mentioned by the said Anthony above supposed to be done, the said Anthony, by leave of the court, &c. (*actio non*); because he says, that the said Henry, before and at the said time when, &c. in the said declaration mentioned, that is to say, on the said twenty-second day of January in the year aforesaid, at the parish aforesaid, was, and continually from that time hitherto hath been, and still is indebted to the said Anthony in a large sum of money, to wit, in the sum of two pounds seven shillings of lawful money of Great Britain, that is to say, for divers goods, wares, and merchandizes before that time sold by the said Anthony to the said Henry at his special instance and request; and the said Henry being so indebted to the said Anthony, the said Anthony afterwards, that is to say, at the said time in the said declaration mentioned, when, &c. peaceably entered the said messuage or dwelling-house of the said Henry in the said declaration mentioned by the door thereof, being then and there open, to demand and receive the said debt from the said Henry, then being in the said messuage or dwelling-house, and then and there did demand the same from the said Henry, as it was lawful for him to do for the cause aforesaid, and in so doing the said A. did necessarily and unavoidably remain and continue, and make a little noise in the said messuage or dwelling-house for the space of one quarter of an hour, parcel of the said space of time in the said declaration mentioned, the said Henry being in the said messuage or dwelling-house during all the time aforesaid, and the said A. during all that time making a little noise, and disturbing, disquieting, annoying, and incommoding the said Henry as little as he the said A. possibly could on that occasion, which are the same breaking and entering of the said messuage or dwelling-house in the said declaration mentioned, and there making a great noise and disturbance in the said messuage or dwelling-house, and remaining and continuing therein for the space of one quarter of an hour, parcel of the said five hours in the said declaration mentioned by the said A. above supposed to be done, whereof the said H. hath

TRESPASS.—REPLICATION—NEW ASSIGNMENT.

hath above thereof complained against him the said A. ; and this,
&c. ; wherefore, &c. S. LAWRENCE.

Replication,
new assignment,
that the defend-
ant entered the
plaintiff's house,
&c. at other and
different times,
and in a greater
degree than was
necessary, and
after request and
notice to depart.

And the said Henry, as to the said plea of the said Anthony by him lastly above pleaded in bar as to the breaking and entering the said messuage or dwelling-house in the said declaration mentioned, and there making a great noise and disturbance in the said messuage or dwelling-house, and continuing and remaining in the said messuage or dwelling-house for one quarter of an hour, parcel of the said space of time in the said declaration mentioned, above done by the said Anthony, says that he the said Henry by reason of any thing by the said Anthony in that plea above alledged ought not to be barred from having and maintaining his aforesaid action thereof against him the said Anthony ; because he the said Henry says, that he sued out his said writ and brought his said suit against the said Anthony not only for the trespasses aforesaid by the said Anthony in his said plea lastly above pleaded in bar mentioned, and thereby attempted to be justified, but also for that the said Anthony on the said twenty-second of June 1787, with force and arms broke and entered the said messuage or dwelling-house of the said Henry in the said declaration mentioned, and then and there made a great noise and disturbance in the said messuage or dwelling-house, and remained and continued in the said messuage or dwelling-house for the said space of time in the said declaration mentioned at other and different times, on other occasions, and in a greater degree than was necessary, and after request and notice to depart from the said messuage or dwelling-house, to wit, at, &c. in, &c. ; which said trespasses so above new assigned are other and different trespasses than the trespasses in the said plea of the said Anthony by him lastly above pleaded in bar mentioned, and thereby attempted to be justified ; wherefore inasmuch as the said Anthony hath not as yet answered the said trespasses above a-new assigned, the said Henry prays judgment and his damages, on occasion of those trespasses so above a-new assigned, to be adjudged to him : And the said Henry, as to the said plea of the said Anthony by him lastly above pleaded in bar as to the said breaking and entering of, &c. &c. *de injuria, &c.*

Drawn by MR. GRAHAM.

Replication to
said plea, *de inju-
ria sua absque tali
causa.*

Plea to new as-
signment, gene-
ral issue and
similiter.

And the said Anthony, as to the said trespasses by the said Henry above newly assigned, saith, that he is not guilty thereof in manner and form as the said Henry hath above thereof complained against him ; and of this he puts himself upon the country ; and the said Henry doth the like ; therefore, &c.

Declaration for
entering dwell-
ing-house and
making a riot
therein, breaking down a fire-grate, tossing the furniture out of the house into the street, and ex-
posing the plaintiff.

SMELTHURST
against

MASON AND OTHERS.

} LANCASHIRE, to wit. John Smel-
thurst complains of William Mason, Tho-
mas Coliart the younger, John Barlow,

and

TRESPASS.—(ENTERING DWELLING-HOUSE, &c.)

and Thomas Ridgway, being, &c. ; for that the said defendants, on the sixth of May 1767, with force and arms broke and entered the dwelling house of the said plaintiff, situate, lying, and being at Great Bolton, in the said county of Lancaster, and made a great noise, riot, and disturbance in the said house, and thereby greatly disturbed and disquieted the said plaintiff in the peaceable and quiet possession, occupation, and enjoyment of his said dwelling-house, and then and there prostrated, broke down, and threw down a certain fire-grate, and a certain wooden table of the said plaintiff of forty shillings, then put and affixed in the said dwelling-house, and the said fire-grate then and there broke to pieces, damaged, and spoiled, and then seized and took divers goods, chattels, and furniture, to wit, one fire-iron, &c. of the value of one hundred pounds, in the said dwelling-house then and there found and being, and with great force, fury, and violence threw, tumbled, tossed, and cast the said goods, chattels, and furniture of the said plaintiff from and out of the said dwelling-house into a certain public street and common highway in Great Bolton aforesaid, adjoining to the said dwelling-house, and thereby and then and there greatly dirtied, sullied, broke, cracked, disjointed, split, damaged, and spoiled the said goods, chattels, and furniture of the said plaintiff, and then and there with strong hands expelled, put out, and amoved the said plaintiff with his family from the possession, occupation, and enjoyment of the said dwelling-house, and kept and withheld the said plaintiff with his family so expelled, put out, and amoved as aforesaid from the possession, occupation, and enjoyment of the said dwelling-house for a long time then next following, to wit, from thence until the exhibiting the bill of the said plaintiff ; whereby the said plaintiff not only during all that time lost and was deprived of the use, occupation, and enjoyment of the said dwelling-house, but was also thereby greatly hurt, injured, and obstructed in his necessary business, affairs, and employment during that time to be by him done, followed, and performed, and was put to great labour and trouble, and obliged to lay out and expend a large sum money, to wit, &c. in and about the obtaining and furnishing another dwelling-house for the habitation of himself and his family, to wit, at, &c. : And also for that the said defendants, on the said tenth of May 1767, with force and arms, at Great Bolton aforesaid, seized and took divers other goods and chattels, to wit, another fire-iron, &c. of the said plaintiff of the value of one hundred pounds, there then found and being, and then and there hurled, tossed, and cast the said last-mentioned goods and chattels of the said plaintiff about from place to place there, whereby the said last-mentioned goods and chattels were then and there greatly broke cracked, disjointed, split, dirtied, lessened in value, and spoiled. [3d and 4th Counts, two common assaults, and other wrongs, &c.]

First, General issue : And for further plea in this behalf as to the breaking and entering the said dwelling-house in the said declaration mentioned, in which, &c. and making a noise, riot, and

Plea, liberum hominem nementum.
See Index.

TRESPASS.—PLEA—

and disturbance in the said dwelling-house, and disturbing and disquieting the said plaintiff in the possession, occupation, and enjoyment of the said dwelling-house, and prostrating, throwing down, and breaking down the said fire-grate and wooden table then put up and affixed in the said dwelling-house, and the said fire-grate and table breaking to pieces, damaging, and spoiling, and seizing and taking the said goods, chattels, and fixtures in the said first Count of the said declaration mentioned, in the said dwelling-house found and being, and throwing, hurling, and casting the said goods, chattels, and furniture from and out of the said dwelling-house into the said public street and common highway in the said declaration mentioned, adjoining to the said dwelling house, and thereby dirtying, daubing, breaking, cracking, disjoining, damaging, and spoiling the said goods, chattels, and furniture, and expelling, putting out, and amoving the said plaintiff with his family from the possession, occupation, and enjoyment of the said dwelling-house, and keeping and withholding the said plaintiff with his family so expelled, put out, and amoved as aforesaid, from the possession, occupation, and enjoyment of the said dwelling-house for the said space of time in the said declaration in that behalf mentioned; and as to the seizing and taking the said other goods and chattels in the second Count of the said declaration mentioned, and throwing, hurling, tossing, and casting the said last-mentioned goods and chattels from place to place, above supposed to have been done by them the said defendants, they the said defendants, by leave of, &c. *adlio non*; because they say, that long before the said first time when, &c. to wit, on, &c. at, &c. in, &c. one G. P. was seised in his demesne as of fee of and in the said dwelling-house in which, &c. with the appurtenances; and being so thereof seised he the said G. P. afterwards, and before the said time when, &c. to wit, on, &c. at, &c. in, &c. duly made his last will and testament in writing, and thereby devised the said dwelling-house, with the appurtenances, in which, &c. amongst others to A. P. the wife of the said G. P. to hold to her the said A. P. and her assigns for and during the term of her natural life, and afterwards, and before the said time when, &c. to wit, on, &c. at, &c. in, &c. the said G. P. died so seised of such his estate of and in the said dwelling-house in which, &c. with the appurtenances; whereupon the said A. P. by virtue of the said devise, afterwards, and before the said first time when, &c. to wit, on, &c. at, &c. in, &c. entered into the said dwelling-house, with the appurtenances, in which, &c. and became, and was, and still is seised thereof in her demesne as of freehold for the term of her natural life, and still is living, to wit, at, &c.; and the said A. P. being so thereof seised the said plaintiff a little before the said time when, &c. to wit, on, &c. at, &c. wrongfully, unlawfully, and without the consent, and against the will of the said A. P. intruded himself and entered into the said dwelling-house, with the appurtenances, in which, &c. and unlawfully took possession thereof, and wrongfully and injuriously, and without the licence and against the consent of the said A. P. brought the said goods, and chattels, and furniture

G. P. seised of the dwelling-house.

G. P. made his will and devised the same to his wife for her life.

G. P. died.

A. P. entered and became seised.

Plaintiff wrongfully intruded himself into the house.

furniture in the said first and second Counts of the said declaration mentioned into the said dwelling-house, and deposited them there, and kept and continued them taking up room in the said dwelling-house and doing damage there to the said A. P. ; for which reason they the said defendants as servants to the said A. P. and by her command, at the said time when, &c. entered into the said dwelling-house in which, &c. as into the dwelling-house and freehold of her the said A. P. and made a noise, riot, and disturbance in the said dwelling-house, as in the dwelling-house and freehold of her the said A. P. and disturbed and disquieted the said plaintiff in the possession, occupation, and enjoyment of the said dwelling-house, as in the wrongful and injurious occupation and enjoyment of the said dwelling-house and freehold of her the said A. P. and then and there expelled, put out, and amoved the said plaintiff with his family from the possession, occupation, and enjoyment of the said dwelling-house in which, &c. and kept and continued the said plaintiff with his family so expelled, put out, and amoved from the possession, occupation, and enjoyment thereof for the said space of time in the said declaration in that behalf mentioned, and because the said fire-grate and wooden table in the first Count of the said declaration mentioned, were at the said time when, &c. wrongfully put up and affixed in the said dwelling-house in which, &c. taking up room in the said dwelling-house, and the said plaintiff being thereunto requested refused to take down and carry away the same, they the said defendants as servants of the said A. P. and by her command then and there took down, prostrated, and removed the said fire-grate and wooden table from and out of the said dwelling-house, and in so doing unavoidably a little broke to pieces, damaged, and spoiled the same ; and because all the said other goods and chattels in the said first and second Counts of the said declaration mentioned were wrongfully and injuriously in the said dwelling-house incumbering the same, and taking up room, and doing damage there to the said A. P. and the said plaintiff being thereunto requested refused to take away the same out of the said dwelling-house, they the said defendants as servants of the said A. P. and by her command at the said times when, &c. seized and took the said goods, chattels, and furniture to then being in the said dwelling-house in which, &c. and removed and carried the same from and out of the said dwelling-house in which, &c. and laid and deposited them in proper and convenient places in the said public street in the said declaration mentioned, next adjoining to the said public dwelling-house in which, &c. and there left the same for the said plaintiff, as it was lawful for them to do for the cause aforesaid, and in so doing did unavoidably a little throw, hurl, toss, and cast the said goods, chattels, and furniture, and thereby a little dirtied, sullied, daubed, broke, cracked, disjointed, damaged, and spoiled the said goods, chattels, and furniture in the said first Count mentioned, doing as little damage thereto as they possibly could on that occasion, which are the same, &c. whereof ; and this, &c. ; wherefore, &c. : And for further plea, &c. &c. &c.

Wherefore the
defendants as
A. P.'s servants
ejected the
plaintiff.

3d Pka of A. P.

[as before in the second plea, omitting what is in *Italic*], (*actio non*) ; because they say, that the said dwelling-house in the said declaration mentioned at the said time when, &c. and before was, and yet is the soil, house, and freehold of Ann Parker, widow, wherefore the said defendants at the said time when, &c. as servants of the said A. P. by her command broke and entered the said dwelling-house and made a noise, riot, and disturbance therein, as in the house, soil, and freehold of the said A. P. and expelled, put out, and removed the said plaintiff and his family from the possession and occupation of the said dwelling-house for the said space of time in the said declaration in that behalf mentioned, as it was lawful for them to do for the cause aforesaid ; and because the said fire-grate and wooden table in the said declaration mentioned, at the said time when, &c. had been and then were wrongfully and injuriously put up and fixed in the said dwelling-house, they the said defendants as servants of the said A. P. by her command took, removed, and carried the said goods, chattels, and furniture from and out of the said dwelling-house in the said public street and common highway in the said declaration mentioned, to prevent the said goods, chattels, and furniture from further incumbering the said dwelling-house, and doing damage to the said A. P. there, and put and left the same in certain and convenient places in that behalf in the said street and public highway for the use of the said plaintiff, they the said defendants doing as little damage to the said plaintiff on that occasion as they possibly could which are the same, &c. whereof, &c. and this, &c. wherefore, &c. [Fourth, fifth, sixth, and seventh. Justification severally by all defendants to the *son assault damage*]

JAMES WALLACE.

Replication.

And the said plaintiff, as to the said plea of the said defendants by them first above pleaded in bar whereof they have put themselves upon the country, doth so likewise : And as to the said plea of the said defendants by them secondly above pleaded in bar as to the breaking, &c. as in second plea above done by the said defendants, he the said plaintiff says, that he by reason, &c. *precludi non* ; because he says, that true it is that long before the said first time when, &c. the said George Parker was seised in his demesne as of fee or and in the said dwelling-house in which, &c. with the appurtenances, and being so thereof seised, he the said G. P. made his last will and testament in writing, and thereby devised the said dwelling-house in which, &c. with the appurtenances to Ann Parker, wife of the said George Parker to hold to her and her assigns for and during the term of her natural life, and afterwards died seised of such his said estate of and in the said dwelling-house in which, &c. with the appurtenances, as the said defendants have above in pleading alledged ; and that thereupon the said Ann by virtue of the demise afterwards and before the said first time when, &c. became and was, and still is seised of the said dwelling-house in which, &c. with the appurtenances in her demesne as of freehold for the term of her natural life, and still is living as the said defendants have above in pleading alledged ; yet protesting that

he

Admits G. P's.
seisin,

And that he
made his will
and devised, &c.

admits A. P's.
seisin,

TITLE LESS THAN FREEHOLD.

203

he the said plaintiff did not wrongfully and wilfully intrude him-
 self and enter into the said dwelling-house in which, &c. with the
 appurtenances, and wilfully take possession thereof, or wrongfully
 or injuriously bring the said goods, chattels, and furniture in
 the said first and second Counts of the said declaration mentioned,
 into the said dwelling house, and deposit them there, as the said
 defendants have above in pleading alledged; for replication in
 this behalf the said plaintiff further says, that the said Ann Parker
 after she became seized of the dwelling-house in which, &c. with
 the appurtenances as aforesaid, and before the said first when, &c.
 to wit, on the twentieth of April 1767, at Great Bolton aforesaid,
 demised the said dwelling-house in which, &c. with the
 appurtenances to one James Butler, to hold the same to the said
 James Butler from the first of May 1767 for and during, and
 unto the full end and term of one whole year from thence next
 ensuing, and fully to be complete and ended; by virtue of which
 said demise the said James Butler afterwards, and before the said
 time when, &c. to wit, on the second of May 1767, at Great
 Bolton aforesaid, entered into the said demised premises in which,
 &c. and became thereof possessed for the said term to him thereof
 granted as aforesaid, and being so thereof possessed, he the said
 James Butler afterwards, and before the said time when, &c. to
 wit, on the said second of May 1787, at Great Bolton aforesaid
 demised the said dwelling-house in which, &c. with the appurte-
 nances unto the said plaintiff, to hold the same unto him the said
 plaintiff from the first of May then last past for and during the
 space of one whole year then next ensuing, and fully to be com-
 plete and ended; by virtue of which said last-mentioned demise
 the said plaintiff afterwards and before the said first time when,
 &c. to wit, on the said second of May 1767, at Great Bolton
 aforesaid, entered into the said dwelling-house in which, &c.
 with the appurtenances, and was thereof possessed until and at the
 said time when, &c. and being so possessed, the said defendants
 at the said time when and so forth of their own wrong broke and
 entered the said dwelling-house in which, &c. and made a noise,
 riot, and disturbance in the said house, and disturbed and disquiet-
 ed the said plaintiff in the possession, occupation, and enjoyment
 of the said house, &c. in manner and form as the said plaintiff
 has above in his said declaration above thereof complained against
 them; and this, &c. wherefore inasmuch as the said defendants
 have above acknowledged the committing of that the trespass, the
 said plaintiff prays judgment and his damages, by reason of the
 committing of that trespass, to be adjudged to him, &c.: And as
 to the said plea of the said defendants by them thirdly above
 pleaded in bar as to the breaking and entering, &c. as above done
 by the said defendants, the said plaintiff says, that he by reason
precludi non; because he says that true it is that the said dwelling-
 house in which, &c. at the said times when, &c. and long before
 was and yet is the house, soil, and freehold of the said Ann
 Parker, widow, as the said defendants have above in their said plea
 thirdly

protesting that
 plaintiff did not
 wrongfully in-
 trude, &c.

says that A. P.
 demised the pre-
 mises to one J.
 B. for a year.

J. B. entered,
 &c.

J. B. demised
 premises to plain-
 tiff for a year.

plaintiff entered;
 ed;

defendants, &c.
 injuria, &c.

Replication to
 third plea.

admits A. P.'s
 claim.

TRESPASS.—REJOINDER.—SURREJOINDER.—

thirdly above pleaded in bar alledged; for replication in this behalf the said plaintiff says, that the said dwelling-house so being the soil and freehold of the said Ann Parker as aforesaid, she the said Ann P. before the said time when, &c. to wit, on the twentieth of April 1767, at Great Bolton aforesaid, demised the said dwelling-house in which, &c. with the appurtenances to the said James Butler to hold, &c. &c. [From this place same as replication to second plea]: Replications to the pleas of *son assault demesne, de injuria sua absque tali causa*.

THOMAS DAVENPORT.

Rejoinder,

admits the demise to J. B.

but says that he gave up the premises to A. P. before the time when, &c.

Traverse of J. P. demise to the plaintiff.

And the said defendants, as to the said replication of the said plaintiff to their said plea secondly above pleaded in bar, say, that true it is that the said Ann P. did demise the said dwelling-house, in which, &c. with the appurtenances to the said James Butler, in manner and form as the said J. hath above in his said replication alledged; but the said defendants further say, that within the year aforesaid and before any of the said times when, &c. to wit, on the eight day of May 1787 at Great Bolton aforesaid, surrendered and yielded up to the said Ann Parker the said dwelling-house in which, &c. with the appurtenances, and all his interest therein; without this that the said J. Butler demised the said messuage with the appurtenances to the said plaintiff, in manner and form as the said plaintiff hath in his replication above alledged; and this, &c. wherefore, &c. [rejoinder to the replication to third plea same verbatim as to second plea.]

JAMES WALLACE.

Surrejoinder, issue on traverse.

And the said plaintiff, as to the said plea of the said defendants by them above pleaded by way of rejoinder to the said replication of the said plaintiff secondly above pleaded as before, says, that the said James Butler demised the said messuage with the appurtenances to the said plaintiff, in manner and form as the said plaintiff hath in his said replication above alledged; and this he prays may be enquired of by the country, &c. [Similiter by defendants; surrejoinder to rejoinder to replication to third plea; verbatim as to second plea, and similiter.]

THOMAS DAVENPORT.

Michaelmas Term, 27. Geo. III.

Declaration for entering a building, subverting the soil therein, and erecting therein a partition, and cutting holes in the wall of the building, and laying timbers therein.

HERGEST } HEREFORDSHIRE, to wit. Ralph Hergest complains against Thomas Lane being, &c. for that the said Thomas, on the first of September 1786, and on divers other days and times between that day and the day of exhibiting the bill of the said Ralph in his behalf with force and arms, broke and entered a certain building of the said Ralph called the Woodhouse, situate and being at the parish of Kingston, in the said county of H. and dug up and subverted the soil of the said Ralph in his said building, to wit, twenty perches of his said soil there, and erected, raised, and built, and caused to be erected, raised, and built a certain partition in, upon,

upon, and over the ground and soil of the said Ralph in his said building, and kept and continued the same so there erected, raised, and built from thence until the time of exhibiting the bill of the said Ralph in this behalf, and then and there cut and made, and caused to be cut and made divers large holes in a certain wall of the said Ralph in his said building, and laid and put, and caused to be laid and put, divers large timbers and pieces of wood into the said wall, and kept and continued the same there for a long space of time, to wit, from thence hitherto, and thereby and therewith, during all that time, loaded the said wall and encroached thereon, and greatly damaged and weakened the same, and other wrongs to the said Ralph then and there did to the damage of the said Ralph of fifty pounds; and therefore, &c. Pledges, &c.

And the said Thomas, &c. general issue: And for further plea in this behalf as to the breaking and entering the said building called the Woodhouse in the said declaration mentioned, and digging up and subverting the soil in the said building there, and erecting, raising, and building, and causing to be erected, raised, and built the said partition in, upon, and over the said ground and soil in the said building, and keeping and continuing the same so there erected, raised, and built, during the time in the declaration in that behalf mentioned, above supposed to be done by the said Thomas, he the said Thomas by leave, &c. (*actis non*;) because he says, that long before the said first time when, &c. to wit, on the twenty-fifth of July 1763, one Edward Greenly, esquire, was seised in his demesne as of fee of and in, amongst other things, a certain stable, with the appurtenances, whereof the said building called the Woodhouse is parcel, and being so seised thereof, he the said Edward Greenly long before the said time when, &c. to wit, on the twenty-fifth of July 1763, at the parish aforesaid, demised the said stable, with the appurtenances, whereof, &c. amongst other premises to one Benjamin Jones, to hold the same to the said Benjamin Jones, his executors, administrators or assigns, from the second of February then last past before the date thereof, for and during the term of ninety-nine years then next ensuing, and fully to be complete and ended; by virtue of which said demise, he the said B. Jones afterwards and long before the said time when, &c. to wit, on the twenty-sixth of July 1763, entered into the said stable, with the appurtenances, whereof, &c. amongst other premises, and became and was possessed thereof for the said term to him thereof demised as aforesaid, and being so possessed thereof, he the said Benjamin Jones afterwards and long before the said time when, &c. to wit, on the sixth of December 1778, at the parish aforesaid, in the said county, died intestate possessed of the said stable, with the appurtenances, whereof, &c. after whose death and before the said time when, &c. to wit, on the thirtieth of January 1779, at the parish of Kingston aforesaid, in the said county, administration of all and singular the goods and chattels, rights and credits which were of

Plea. Title less than freehold. See Index.

E. G. seised of a stable with the appurtenances, whereof the said building is part, &c.

E. G. demised the said premises to B. T. for ninety-nine years,

B. J. entered, &c.

B. J. died intestate,

administration granted to M. J. the

said B. Jones deceased, at the time of his death, by Frederick, by divine Providence, Archbishop of Canterbury, to whom the granting of administration in that behalf belonged in due form of law, was committed to Mary Jones, by virtue whereof, she the said Mary J. afterwards, and before the said time when, &c. to wit, on the same day and year last aforesaid, entered into the said stables, with the appurtenances whereof, &c. and became and was thereof possessed for the rest, residue, and remainder of the said term of ninety-nine years then to come and unexpired, and being so possessed thereof as aforesaid, she the said Mary Jones afterwards, and long before the said time when, &c. to wit, on the twenty-fourth of February 1783, at the parish aforesaid, in the said county, assigned the said stable with the appurtenances, whereof, &c. to the said Thomas, to hold to him the said Thomas from thenceforth for and during the rest, residue, and remainder of the said term of ninety-nine years then to come and unexpired; by virtue of which said assignment, he the said Thomas afterwards, and long before the said first time when, &c. entered upon the said stable whereof, &c. and became and was possessed thereof continually from thenceforth, until a little before the said first time when, &c. and being so possessed thereof, the said Ralph afterwards, and a little before the said first time when, &c. to wit, on the first of September 1786, under colour of a certain charter of demise thereof made by the said Edward Greenly to him the said Ralph for the term of his natural life, before the making of the said demise to the said Benjamin Jones deceased, when in fact nothing ever passed into the possession of the said Ralph by virtue of that charter of demise, wrongfully entered into the said building, in the said declaration mentioned, parcel of the said stable with the appurtenances, and was possessed thereof, upon whose possession thereof, he the said Thomas at the said several times when, &c. the said term of ninety-nine years at the said several times when, &c. being in full force and undetermined, entered the said building as being the building of the said Thomas, and parcel of the said stable with the appurtenances, and dug and subverted the soil in the said building as being the soil of the said Thomas in his said building, parcel, &c. erected, raised, and built the said partition in, over, and upon the ground of the said building and soil of the said building, and kept and continued the same so there erected, raised, and built for and during the time in the said declaration above mentioned, as being the ground and soil of the said Thomas in his said building, parcel, &c. as it was lawful for him to do for the cause aforesaid, which are the same, &c. whereof, &c.; and this, &c.; wherefore, &c.: And for further plea in this behalf, as to the putting and laying, and causing to be put and laid the said timbers and pieces of wood into the said holes in the said wall, in the said declaration mentioned, and keeping and continuing them there for the said space of time in the said declaration mentioned, above supposed to have been done by the said Thomas, he the said Thomas by like leave, &c. (*actio non*);

because he says, that he the said Thomas, by the leave and licence of the said Ralph before that time given and granted, to wit, at the parish aforesaid, in the said county, put and laid, and caused to be put and laid the said timbers and pieces of wood up the said holes in the said wall in the said declaration mentioned, and kept and continued the same there for the said space of time in the said declaration mentioned, whereof the said Ralph hath above complained against the said Thomas; and this, &c.; wherefore, &c.

F. BOWER.

And the said Ralph, as to the said plea of the said Thomas by him secondly above pleaded in bar as to the breaking, &c. by the said Thomas above done, says, that by reason, &c. *precludi non*; because he says, that after the said assignment of the said stable, with the appurtenances, whereof, &c. to the said Thomas in the said second plea of the said Thomas mentioned, and long before the said time when, &c. to wit, on the twenty-fourth of February 1783, at, &c. the said Thomas demised the said building called the Woodhouse, parcel, &c. in which, &c. to wit, the appurtenances, to the said Mary Jones, to hold the same to the said Mary from thenceforth for and during the term of one year, and so on from year to year, for so long a time as the said Thomas and Mary should please; by virtue of which said demise the said Mary afterwards, and before the said first time when, &c. to wit, on the same day and year last aforesaid, entered into the said building called the Woodhouse, and became and was possessed thereof for the said term to her thereof demised, and being so possessed thereof the said Mary Jones afterwards, and long before the said time when, &c. to wit, on the twenty-ninth of December 1785, at, &c. assigned the said building called the Woodhouse, parcel, &c. and in which, &c. with the appurtenances, to one Thomas Phillips, to hold to the said Thomas Phillips for and during the residue of the said term to the said Mary Jones thereof demised as last aforesaid, by virtue of which assignment the said Thomas Phillips afterwards, and before the said time when, &c. to wit, on the same day and year last aforesaid, entered into the said building called the Woodhouse, in which, &c. and became and was possessed thereof for the remainder of the said term so thereof demised to the said Mary by the said Thomas Lane, and being so possessed thereof, he the said T. P. afterwards, and long before the said time when, &c. to wit, on the ninth of June 1786, at, &c. assigned the said building called the Woodhouse, parcel, &c. in which, &c. with the appurtenances, to the said Ralph, to hold to him the said Ralph for and during the residue of the said term to the said Mary thereof demised as last aforesaid, by virtue of which said assignment the said Ralph afterwards, and before the said first time when, &c. to wit, on the same day and year last aforesaid, entered into the said building called the Woodhouse, and became and was possessed thereof for the remainder of the said term to the said

Replication, that after the said assignment the defendant demised the said building to M. J.

M. J. entered,

M. J. assigned to one T. P.

T. P. entered,

T. P. assigned to plaintiff.

Plaintiff entered, &c.

TRESPASS.—REJOINDER.

and was possessed, until the defendant *de injuria sua*, &c. (the demise to M. J. being in full force.)

To 3d plea.
Issue thereon.

said Mary Jones thereof demised by the said Thomas Lane, and continued so possessed thereof until the said Thomas Lane, of his own wrong, afterwards, to wit, at the said several times when, &c. (the said demise so made to the said Mary Jones by the said Thomas Lane being then in full force and in no ways ended or determined), committed the trespasses aforesaid in the said plea above attempted to be justified; and this, &c.; wherefore, &c.: And the said Ralph, as to the said plea of the said Thomas Lane by him lastly above pleaded as to the putting, &c. *precludi non*; because he says, that the said Thomas Lane did not by the leave and licence of the said Ralph put clay, and cause to be put and laid the said timber and pieces of wood into the said holes in the said walls in the said declaration mentioned, and keep and continue the same there for the said space of time in the said declaration mentioned, in manner and form as the said Thomas Lane hath above in pleading alledged; and this the said Ralph prays may be enquired of by the country, &c.

WM. WALTON.

Hilary Term, 28. Geo. III.

Rejoinder, protesting insufficiency.

And the said Thomas Lane, as to the said plea of the said Ralph by him above pleaded by way of reply to the said plea of the said Thomas Lane by him secondly above pleaded in bar as to the breaking, &c. above supposed to be done by the said Thomas Lane, he the said Thomas Lane protesting that the said plea of the said Ralph by him above pleaded by way of reply to the said plea of the said Thomas Lane by him secondly above pleaded in bar, and the matters therein contained, are not sufficient in law for him the said Ralph to have or maintain his aforesaid action against him the said Thomas Lane; protesting also that the said demise in the said replication of the said Ralph pretended to have been made by the said defendants to the said Mary Jones was not at the said several times when, &c. in full force and no way ended or determined; for rejoinder nevertheless in this behalf saith, that the said Thomas Lane did not demise the said building called the Woodhouse, parcel, &c. and in which, &c. with the appurtenances, to the said Mary Jones in manner and form as the said Ralph hath above in pleading alledged; and of this he the said Thomas Lane put himself upon the country, &c.

Drawn by MR. J. GRAHAM.

Michaelmas Term, 28. Geo. III.

Declaration in B. R. for breaking open a pound, and taking out defendant's cattle; which plaintiff had impounded, having taken them damage feasant.

SUMPTER, ESQUIRE,
against
CROSS.

CAMBRIDGESHIRE, to wit.
Thomas Sumpter, esquire, complains of James Cross, being, &c.; that whereas the said Thomas, on the eighteenth of September 1787, at the parish of Histon, in the said county of Cambridge, in a certain close of the said Thomas there called Histon Common, had taken the horses, mares, and geldings, to wit, six horses, six mares, and six geldings of the said James, which were then and there eating

TRESPASS.—(POUND BREACH)—AND TO LANDS, &c.

eating up, depasturing, treading down, consuming, and spoiling the corn and grafs of the said Thomas then growing in the said close, and doing damage to the said Thomas there and then, there had impounded the said horses, mares, and geldings in the common pound at the parish aforesaid for the damage then done in the said close, the said James thereupon afterwards, to wit, on the same day and year aforesaid, at the parish aforesaid, with force and arms, broke, and the said horses, mares, and geldings so impounded, took, led, and drove away: And also for that the said James, on the said first of June 1787, and on divers other days and times between that day and the day of exhibiting, &c. with force and arms, broke and entered a certain close of the said Thomas called Histon Common, at the parish of Histon aforesaid, in the said county, and with his feet in walking trod down, trampled upon, consumed, and spoiled the grafs and corn, to wit, wheat, rye, barley, oats, pease, and beans of the said Thomas there then growing and being of great value, to wit, of the value of five pounds, &c. and with cattle, to wit, horses, mares, and geldings, bulls, cows, oxen, heifers, sheep, and swine, eat up, depastured, trod down, trampled upon, consumed, and spoiled other the grafs and corn, to wit, &c. of the said Thomas there then growing of other great value of other five pounds of, &c.: And also for that the said James afterwards, to wit, on, &c. and on divers other days and times between that day and the day of, &c. with force and arms, broke and entered a certain other close called the Pound, situate, lying, and being in the parish aforesaid, in the said county, and with his feet in walking trod down, &c. &c. of the said Thomas then and there growing of other great value, to wit, of the value of other five pounds of, &c. and then and there broke to pieces, damaged, spoiled, and destroyed the locks, hinges, and staples of and belonging to a certain door or gate in the said last-mentioned close, to wit, five locks, five pair of hinges, and five staples of other great value, to wit, of the value of other five pounds of, &c. and other wrongs and injuries, &c. &c. Pledges, &c.

Drawn by MR. J. GRAHAM.

I presume that the cattle were trespassing on Histon Common, which belongs to the plaintiff as lord of the manor. I have joined a count for the pound breach, with the trespass upon the common in the pound, though I have

some doubt whether the pound breach can be joined with the trespass; and therefore I would advise plaintiff in taking his verdict to take it either upon the first Count or upon the two last Counts.

In K. B. Trinity Term, 18. Geo. III.

FRIDENBERG } **MIDDLESEX**, to wit. John Fridenberg Declaration, in
against } complains against John Davenport, Richard B. B. R. for break-
DAVENPORT. } &c. being in the custody, &c.; for that the said ing plaintiff's
John Davenport, &c. on, &c. and on divers other days and times close, treading
and corn, prostrating the hedges, and with horses and carts cutting up and subverting the
soil, &c. &c.

between

TRESPASS to LANDS, &c.

between that day and the day of exhibiting this bill, with force and arms, &c. broke and entered a close, to wit, a certain close of the said F. called, &c. at, &c. and with their feet in walking trod down, trampled upon, and consumed the grafs and corn, to wit, wheat, rye, barley, &c. of the said John of the value of ten pounds on those several days and times growing and being in the said close, and with their cattle, to wit, horses, eat up, depastured, trod down, trampled upon, consumed, and spoiled other the grafs and corn, to wit, other wheat, rye, &c. of the said John of the value of other ten pounds on those several days and times there also growing and being on the said close, with the wheels of carts and other carriages threw down and prostrated, spoiled, and destroyed other the corn and grafs, to wit, &c. of the said John of the value of other ten pounds on those several days and times also growing and being in the said close, and also with the wheels of the said carts, &c. turned up, rooted up, and subverted the soil, to wit, one hundred perches of the said John in his said close, and broke down, threw down, prostrated, and destroyed the said hedge and fences, to wit, &c. of the said John of the value of other ten pounds, on those several days and times standing, growing, and lying in his said close: And also for that the said John D. &c. on, &c. and on divers other days and times between that day and the day of exhibiting the bill, with force and arms, &c. broke and entered a certain other close of the said John, at, &c. and with their feet in walking trod down, trampled upon, consumed, and spoiled the grafs and corn, to wit, wheat, &c. to wit, of the value of ten pounds on those several days and times growing and being in the said close, and with their cattle, to wit, horses, &c. eat up, trod down, trampled upon, consumed, and spoiled other the grafs and corn, to wit, wheat, rye, &c. of the said John, &c. of the value of other ten pounds, on those several days and times last-mentioned, and with the wheels of carts, waggons, &c. threw down, prostrated, spoiled, and destroyed other the grafs and corn, to wit, other wheat, rye, &c. of the said John of the value of other ten pounds on those several last-mentioned days and times also growing and being in his said last-mentioned close, and which wheels of the said last-mentioned carts, waggons, &c. turned up, rooted up, and subverted the soil, to wit, one hundred perches of the soil of the said John in the said last mentioned close, and broke down, threw down, prostrated, and destroyed other the hedges and fences, to wit, forty-eight perches of other hedges, and forty perches of other fences of the said John of the value of other ten pounds on those last-mentioned days and times standing, growing, and being in his said last-mentioned close, and other injuries to the said J. then and there did to his great damage, and against the peace of our lord the now king; wherefore he says he is injured, and hath sustained damage to the value of one hundred pounds; and therefore he brings suit, &c.

W. WALTON.

MAYOR

TRESPASS to LANDS, &c.—(ENTERING CLOSE.)

113

MAYOR AND CORPORATION OF NORWICH } NORWICH, Declaration in
against } to wit. John C. B. for enter-
SWANN. } Swann, late of, ing plaintiff's

&c. was attached to answer the mayor, sheriffs, and citizens of
Norwich in a plea; wherefore the said John, with force and arms,
&c. broke and entered the close of the said mayor, sheriffs, citi-
zens, and commonalty, lying and being in the parish, &c. and
there erected, set up, put up, and placed divers stables, stools,
trussels, chairs, baskets, hampers, steps, pots, pans, candlesticks,
faucepans, boilers, and lanthorns in and upon the said close, and
kept and continued the same so there erected, set up, put, and placed
for a long space of time, and other wrongs to the said mayor,
sheriffs, citizens, and commonalty there did, to the great damage
of the said sheriffs, citizens, and commonalty, and against the
peace of our lord the now king; and thereupon the said mayor,
sheriffs, citizens, and commonalty, by A. B. their attorney,
complain, that the said John, on, &c. and on divers other days
and times between that day and the day of suing forth the original
writ of the said mayor, sheriffs, citizens, and commonalty, with
force and arms, broke and entered the said close of the said mayor,
sheriffs, citizens, and commonalty, lying and being in the parish,
&c. and there erected, set up, and placed divers tables, stools,
&c. to wit, three tables, &c. &c. in and upon the said close, and
there kept and continued the same so there erected, set up, put up,
and placed for a long space of time, to wit, for the space of, &c.
and other wrongs, &c. to the great damage, &c. and against the
peace, &c.; whereupon the said mayor, sheriffs, citizens, and
commonalty say they are injured, and have full-lined damages to
the amount of fifty pounds; and thereupon they bring suit, &c.

N. B. Erecting of stalls in a market
is not of common right, and trespass
will lie at the suit of the owner of the
soil against any one who sets up a stall
without leave, 1. Will. 137. 2. Show.
1238.

An account of the pleadings in this
cause, with the argument on which
judgment was given for this plaintiff, in
2. Black. Rep. 1116.

Trinity Term, 20. Geo. III.

TOOMER } SOMERSETSHIRE, to wit. Joseph Toomer Declaration for
against } complains against George Coomer, being, &c.; for entering close,
COOMER. } that the said George, on the sixteenth of September and destroying
1785, and on divers other days and times between that day and gates and fences,
the day of exhibiting the bill of the said Joseph, with force and and breaking to
arms, broke and entered the close of the said Joseph called Cock- pieces lock, &c.
lake Orchard, situate, lying, and being in the parish of Wed-
more, in the said county of Somerset, and with his feet in walking
trod down, trampled upon, consumed, and spoiled the grass of
the said Joseph there then growing of great value, to wit, of the
value of five pounds, and with saws, hatchets, hammers, pick-
axes, spades, and other iron instruments, pulled down, broke
down, broke to pieces, spoiled, prostrated, and destroyed the
Vol. IX. 1 gates,

gates, hedges, and fences of the said Joseph; to wit, five gates, five perches of the hedges, and five perches of the fences then and there erected, standing, and being, and the wood and bushes thereof coming, to wit, five cart loads of wood, and five cart loads of bushes, seized, took, and carried away, and converted and disposed thereof to their own use, and tore off, broke off, broke to pieces, damaged, and spoiled the locks, chains, bolts, hinges, hasps, and staples, to wit, five locks, five chains, five bolts, five pair of hinges, five hasps, and five staples of and belonging to the said Joseph, and wherewith the said gates were then and there locked, chained, bolted, and fastened, and the materials thereof coming, of the value of five pounds, seized, took, and carried away, and converted and disposed thereof to his own use, and other injuries to the said Joseph the said George then and there did, against the peace of our lord the king, and to the damage of the said Joseph of twenty pounds; therefore he brings suit, &c.

Drawn by MR. CROMPTON.

Plea 1st, General Issue.

And the said George, by George South his attorney, comes and defends the force and injury, when, &c. and says, that he is not guilty of the premises above laid to his charge in manner and form as the said Joseph hath above thereof complained against him; and of this he puts himself upon the country, &c.; and the said Joseph doth so likewise, &c.: And for a further plea in this behalf as to the breaking and entering the said close of the said Joseph in the said declaration mentioned, and with his feet in walking treading down, trampling upon, consuming, and spoiling the said grass there then growing, by the said George above supposed to have done, he the said George, by, &c. says that the said Joseph (*alio non*); because he says, that he the said George, at the said several times when, &c. in the said declaration mentioned, by the leave and licence of the said Joseph to the said George for that purpose first given and granted, entered the said close in which, &c. in the said declaration mentioned, and with his feet in walking trod down, trampled upon, spoiled, and consumed the grass of the said Joseph there growing, as he lawfully might for the cause aforesaid, which are the same supposed trespasses in the introduction to this plea above particularly mentioned, whereof the said Joseph hath above complained against him; and this, &c.; wherefore, &c.: And for further plea in this behalf as to the breaking and entering the same close in which, &c. in the said declaration mentioned, and with his feet in walking treading down, trampling upon, spoiling, and consuming the grass there then growing, and tearing off, breaking off, breaking to pieces, damaging, and spoiling the said locks, chains, bolts, hinges, hasps, and staples of and belonging to the said Joseph wherewith the said gates in the said declaration mentioned were locked, chained, bolted, and fastened by the said George above supposed to be done, he the said George, by leave, &c. says that the said

2d plea, as to the entering close.

Alio non.

Leave and licence to enter close.

3d plea, as to entering close and breaking the locks.

Joseph (*actio non*) ; because he says, that he the said Joseph, long before the said times when, &c. in the said declaration mentioned, or any of them, to wit, on the twenty-seventh of June 1785, at the parish aforesaid, bargained and sold to the said George, and the said George then and there bargained and bought of the said Joseph the grass and pasturage of the said close of the said Joseph in which, &c. to be fed, depastured, eat, and consumed by the cattle of the said George from the said twenty-seventh of June, in the year aforesaid, until the first of November then next following, by virtue of which said bargain and sale the said George afterwards, to wit, on the twenty-eighth of June, in the year aforesaid, and also on divers other days and times between that day and the first of November in the year aforesaid, did put divers cattle of him the said George into and upon the said close in which, &c. to graze, feed, and depasture on the grass there growing and being, and because the said gates of the said close in which, &c. at the said several times when, &c. in the said declaration mentioned, being respectively days and times between the said twenty-seventh of June and the said first of November in the year aforesaid, at the parish aforesaid, were locked, chained, bolted, and fastened with the said locks, chains, bolts, hinges, hasps, and staples in the said declaration mentioned, by means whereof the said George was obstructed, prevented, and hindered from putting divers cattle of him the said George into the said close in which, &c. to feed and depasture on the grass then growing in the said close in which, &c. he the said George, at the said several times when, &c. in the said declaration mentioned, so respectively being days and times between the said twenty-seventh of June and the first of November in the year aforesaid, in order to put the said last-mentioned cattle of him the said George into the said close in which, &c. to feed and depasture on the said grass there growing and being in the said close, did tear off and break off the said locks, chains, bolts, hinges, hasps, and staples from off the said gates, and thereby opened the said gates, and put his said last-mentioned cattle into the said close in which, &c. to feed and depasture on the grass there growing until the said first of November in the year aforesaid, as he lawfully might, and in so doing he the said George, with his feet in walking, trod down, trampled upon, spoiled, and consumed a little of the grass of the said Joseph at those times growing in the said close, and necessarily and unavoidably did a little break to pieces, damage, and spoil the said locks, chains, bolts, hinges, hasps, and staples in the said declaration mentioned, doing as little damage to the same as he possibly could on that occasion, which are the same trespasses in the introduction to this plea above particularly mentioned, and whereof the said Joseph hath above complained against him ; and this, &c. ; wherefore, &c.

actio non ; because plaintiff bargained and sold to defendant the pasturage of *locus in quo*.

Defendant thereupon put his cattle into *locus in quo* ; and because the said gates were locked and fastened, he pulled off the locks, &c. and put in his cattle.

And in so doing, &c.

J. BURROUGH.

Hilary Term, 26. Geo. III.

Replication to
Second plea; if
true thereon.

And the said Joseph, as to the said plea of the said George by him secondly above pleaded in bar as to the breaking and entering the said close of the said Joseph in the said declaration mentioned, and with his feet in walking treading down, trampling upon, spoiling, and consuming the said-grass there then growing, by the said George above acknowledged to be done by the said Joseph, says, that he, by reason of any thing in that plea above alledged (*precludi non*); because he says, that the said Joseph did not give any such leave or licence to the said George, as the said George hath in that plea above alledged; and this he the said Joseph prays

*To third plea.

may be enquired of by the country, &c.: And as to the said plea of the said George by him lastly above pleaded in bar, as to the breaking and entering the said close in which, &c. in the said declaration mentioned, and with his feet in walking, treading down, trampling upon, spoiling, and consuming the grass there then growing and being, and tearing off, breaking off, breaking to pieces, damaging, and spoiling the said locks, chains, bolts, hinges, hasps, and staples of and belonging to the said Joseph, wherewith the said gates in the said declaration mentioned were locked, chained, bolted, and fastened by the said George above acknowledged to be done, he the said Joseph says, that he by reason of any thing in that plea above alledged (*precludi non*); because he says, that true it is that the said Joseph did bargain and sell to the said George, and the said George then and there bargained and bought of the said Joseph the grass and pasturage of the said close of the said Joseph in which, &c. in manner and form as the said George hath in his said last-mentioned plea above alledged; but the said Joseph says, that the said George of his own wrong, and without the residue of the cause by him in that plea above alledged, broke and entered the said close in which, &c. in the said declaration mentioned, and with his feet in walking trod down, trampled upon, spoiled, and consumed the grass there growing, and tore off, broke off, broke to pieces, damaged, and spoiled the said locks, chains, bolts, and fastenings of and belonging to the said Joseph, wherewith the said gates in the said declaration mentioned were locked, chained, bolted, and fastened, in manner and form as the said Joseph hath above theret complained against the said George; and this the said Joseph prays may be enquired of by the country, &c.

Drawn by Mr. CROMPTON.

Hilary Term, 28. Geo. III,

Declaration for
entering dwelling-house and
close, and taking away goods,
expelling plaintiff's lock,
on the gates,
digging up soil,
disputing cat-

PARSONS

against
GLYDE, AND OTHERS.

} SOMERSETSHIRE, to wit.

} John Parsons complains of William Glyde, Hugh Bellet, and Charles Loney, being, &c.; for that the said defendants, on the twenty-sixth of November 1785, with force and arms broke and entered the dwelling-house, two water mills, two orchards, two gardens, two stables, two outhouses, and divers, to wit, ten closes of land of the

the said John Tory, situate and being at Stamford Arundel, in the county of Somerset aforesaid, and there made a great noise, riot, and disturbance in the said dwelling-house, and then and there toiled, threw out, and removed the goods and chattels, to wit, twenty chairs, ten tables, six bureaux, six bedsteads, ten looking-glasses, twenty chests, twenty boxes, forty plates, forty dishes, ten spades, twenty shovels, ten sieves, ten hooks, and ten knives of the said John Tory of the value of one hundred pounds there then being in his said house from and out of the same; by means whereof the said goods and chattels were broken to pieces and wholly spoiled, and then and there expelled, put out, and amoved the said John Tory and his family from and out of the possession, use, occupation, and enjoyment of his said dwelling-house, mills, orchards, gardens, stables, outhouses, and closes of land, and kept and continued him and them to expelled, put out, and amoved from the possession thereof for a long time, to wit, for the space of three months then next following, and during all that time had, received, and took the issues and profits thereof to their own use, and then and there fixed and put divers locks and fastenings, to wit, twenty locks and twenty fastenings in and upon divers, to wit, twenty gates of and belonging to the aforesaid ten closes of land of the said J. T. and with ploughs, spades, shovels, and other iron instruments, dug up and subverted the earth and soil of the said plaintiff in his aforesaid ten closes of land, and with their cattle, to wit, horses, mares, geldings, cows, oxen, and sheep, eat up, trod down, trampled upon, contained, and spoiled the grats of the said plaintiff being in his said closes of land, and then and there seized and took the goods and chattels, to wit, ten cart loads of wood, ten cart loads of straw, and ten cart loads of turf of the said plaintiff there then found and being, and burnt and consumed the same, and converted and disposed thereof to his own use: And also for that the said defendants, afterwards, to wit, on the same day and year aforesaid, at, &c. with force and arms seized and took other goods and chattels, to wit, ten cart loads of other wood, ten cart loads of other straw, ten cart loads of other turf, and six hundred pounds weight of iron of the said plaintiff of the value of fifty pounds, there then also found and being, and carried away the same, and converted and disposed thereof to their own use, and other wrongs, &c. against the peace, &c. to the damage of the said plaintiff of one hundred pounds; and therefore, &c. Pledges, &c.

W. WALTON.

And the said William, Hugh, and Charles, general issue: And for further plea in this behalf as to the breaking and entering the said dwelling-house, water mills, orchards, gardens, stables, outhouses, and closes of land in the first Count of the said declaration mentioned, and there making a noise and disturbance in the said dwelling-house, and there toiling, throwing out, and removing the said goods and chattels in the said first Count of the said declaration mentioned, being in the said dwelling-house, from and out

of the same, and there expelling, putting out, and amoving the said John Tory and his family from and out of the possession, use, occupation, and enjoyment of the said dwelling-house, mills, orchards, gardens, stables, outhouses, and closes of land, and keeping and continuing them so expelled, put out, and amoved from the possession thereof for the said space of time in the said declaration mentioned, and during all that time having received and taken the issues and profits thereof to their own use, and there fixing and putting the said locks and fastenings in the said first Count of the said declaration mentioned, in and upon the said gates of and belonging to the said closes of land in the said declaration mentioned, and with ploughs, spades, shovels, and other iron instruments, digging up and subverting the said earth and soil in the said closes of land in the said first Count of the said declaration mentioned, and with the said cattle in the said first Count of the said declaration mentioned, eating up, treading down, trampling upon, consuming, and spoiling the grafs in the said closes in the said first Count of the said declaration mentioned above supposed to have been done by the said defendants, they the said defendants, by leave, &c. (*adlio non*); because they say, that the said dwelling-house, water-mills, orchards, gardens, stables, outhouses, and closes of land in which, &c. in the said first Count of the said declaration mentioned, at the said time when, &c. in the said first Count mentioned and before, were and still are the dwelling-house, mills, orchards, stables, outhouses, closes, soil, and freehold of the said William; wherefore the said William in his own right, and the said Hugh and Charles, as the servants of the said William, and by his command at the said time when, &c. in the said first Count of the said declaration mentioned, entered the said dwelling-house, water mills, orchards, gardens, stables, outhouses, and closes of land in which, &c. in the said first Count of the said declaration mentioned, as being the soil and freehold of the said William, and in so doing made as little noise and disturbance as it was lawful for them to do for the cause aforesaid; and because the said first-mentioned goods and chattels in the said first Count of the said declaration mentioned, before and at the said time when, &c. in the said first Count mentioned, were placed and were within the said dwelling-house, and were incumbering the same, and annoying the said William in the enjoyment and peaceable seisin and possession thereof; wherefore the said William in his own right, and the said Hugh and Charles as his servants, and by his command gently and peaceably removed the said first-mentioned goods and chattels from and out of the said dwelling-house, and then and there placed and laid them at a little distance therefrom, and in so doing necessarily and unavoidably a little tossed, threw, and removed the said first-mentioned goods and chattels as it was lawful for the cause aforesaid, doing as little damage to the same as they possibly could, and then and there expelled, put out, and amoved the said plaintiff and his family from and out of the possession, use, occupation, and enjoyment of the said dwelling-house, mills,

Liberum tenementum of one of the defendants.

AND LICENCE.

mills, orchards, gardens, stables, outhouses, and closes, and kept and continued him and them so expelled, put out, and amoved from the possession thereof during the said time in the said declaration as from and out of the dwelling-house, mills, orchards, gardens, stables, outhouses, and closes, soil, and freehold of the said William, and during all the time last aforesaid had received and took the issues and profits thereof to and for the use of the said William, as being the issues and profits of the said William coming and removing from and out of the said soil and freehold of the said William, and then and there fixed and put the said locks and fastenings in the said first Count of the said declaration mentioned in and upon the said gates of and belonging to the said closes of land in the said declaration mentioned, as being the gates of the said William in and upon the said closes, soil, and freehold, and then and there dug up and subverted the said soil in the said declaration mentioned, as being the soil of the said William in his said closes, soil, and freehold, and with the said cattle then and there eat up, trod down, trampled upon, consumed, and spoiled the said grafs in the said declaration mentioned, as being the grafs of the said William, then growing in the said closes, soil, and freehold of the said William, as it was lawful for them to do for the cause aforesaid, which are the same trespasses in the introduction to this plea mentioned, whereof the said plaintiff hath above complained against the said defendants; and this, &c.; wherefore, &c.: And for further plea in this behalf as to the breaking and entering, &c. (as before) above supposed to have been done by the said defendants, by like leave, &c. (*actio non*); because they say, that they the said defendants, at the said time when, &c. in the said first Count of the said declaration mentioned, by the leave and licence of the said plaintiff by him for that purpose to the said defendants first given and granted, to wit, at Stamford Arundel, in the said county of Somerset, broke and entered the said dwelling-house, mills, orchards, gardens, stables, outhouses, and closes of land in the said first Count of the said declaration mentioned, and then and there a little tossed about, threw out, and removed the said first mentioned goods and chattels in the said first Count of the said declaration mentioned, being in his said dwelling-house from and out of the same, and then and there expelled, put out, and amoved the said plaintiff and his family from and out of the possession, use, occupation, and enjoyment of the said dwelling-house and mills, orchards, gardens, stables, outhouses, and closes of land in the said first Count of the said declaration mentioned, and kept and continued him and them so amoved and put out for the said space of time in that behalf in the said first Count of the said declaration mentioned, and during the time last aforesaid had received and took the issues and profits thereof to their own use, and then and there fixed and put the said locks and fastenings in and upon the said gates in the said first Count of the said declaration mentioned of and belonging to the said closes of land, and then and there dug up and subverted the said earth and soil in the said first Count of the said

3d Plea.

Leave and
licence.

PLEA OF JUSTIFICATION BY AUTHORITY OF LAW

4th Plea, as to entering the house, and taking goods, &c.

In Trinity term, one of the defendants recovered judgment against plaintiff in B. R.

From part, &c.

Defendant sued out a *fiery facias* thereon directed to the sheriff of S.

said declaration, and with his said cattle in the said declaration mentioned eat up, trod down, trampled upon, consumed, and spoiled the said grafs of the said plaintiff in the said closes of land in the said first Count of the said declaration mentioned, which are the same, &c. whereof, &c.; and this, &c. wherefore, &c.: And for further plea in this behalf as to the breaking and entering the said dwelling-house, water-mills, orchards, gardens, stables, outhouses, and closes of land of the said plaintiff in the said first Count of the said declaration mentioned in which, &c. and there making a noise and disturbance in the said dwelling-house, and there seizing and taking the said goods and chattels in the said first Count of the said declaration mentioned, and converting and disposing of the same to their own use, and also as to the seizing and taking of the said goods and chattels in the said last Count of the said declaration mentioned, and converting and disposing thereof to their own use, and above supposed to have been done by them the said defendants, they the said defendants, by like leave, &c. (*ad hoc non*); because they say, that before the said time when, &c. in the said first Count of the said declaration mentioned, to wit, in the term of the Holy Trinity, in the twenty-fifth year, &c. in the court of our said lord the king, before the king himself (the said court then still being at Westminster, in the county of Middlesex) the said William, by the consideration and judgment of the same court, did recover against the said plaintiff as well a certain debt of nine hundred pounds as also eighty-three shillings for his damages which he had sustained as well by reason of the detention of the debt as for his costs and charges by him about his suit in that behalf expended, whereof the said plaintiff is convicted, as by the record and proceedings thereof now remaining in the said court of our said lord the king, before the king himself at Westminster afore said, more fully appears: And the said defendants further say, that afterwards, to wit, on the fifteenth day of June, in the twenty-fifth year, &c. the said judgment then being in full force and effect, not in anywise reversed, vacated, discharged, paid off, or satisfied, for obtaining execution of the same judgment the said William sued out of the said court of our said lord the king before the king himself at Westminster afore said, a certain writ of our lord the king, called a *fiery facias*, directed to the sheriff of the county of S. by which said writ our said lord the king commanded the said sheriff that he should cause to be levied of the goods of the said John Tory in his bailiwick the said nine hundred pounds, which the said William lately in the said court of our said lord the king himself at Westminster afore said, recovered against him the said plaintiff for his debt afore said, and also eighty-three shillings for his damages, costs, and charges afore said, and that the said sheriffs should have those monies before our said lord the king at Westminster on Monday next after the morrow of All Souls, to be paid to the said William for his debt, damages, costs, and charges afore said, and that the sheriff should have there then that writ; which said writ afterwards, and before the return thereof, and also before

fore the said times when, &c. in the said declaration mentioned, to wit, on the thirtieth day of October 1785, at Stamford Arundel aforesaid, in the said county, was delivered to Richard Crosse, *Fieri facias delivered to the sheriff.* esquire, then and continually from thenceforth, until, and at, and after the return of the said writ, being sheriffs of the said county of Somerset as aforesaid, to be by him executed in due form of law; by virtue of which said writ the said Richard Crosse, esquire, then being sheriff of the county of Somerset, afterwards, and before the return thereof, and also before the said time when, &c. in the said first Count of the said declaration mentioned, to wit, on the thirtieth day of November 1785, at Stamford Arundel aforesaid, in the county of Somerset, made his warrant in writing under the seal of his said office of the sheriff of the county of Somerset, directed to one Lewis Cogan the younger, and to the said Charles his bailiff for that occasion, whereby the said sheriff commanded them and every of them, jointly and severally, that they should cause to be made of the goods and chattels in his the said sheriff's bailiwick of the said J. T. as well the said debt of nine hundred pounds which the said William lately recovered in the said court of our said lord the king, before the king himself at Westminster, as also the said eighty-three shillings for his damages, costs, and charges aforesaid, so that the said sheriff might have the said sum of money before our said lord the king at Westminster on Monday next after the morrow of All Souls, to be paid to the said William for his debt, damages, cost, and charges aforesaid, which said Warrant *made his warrant to Lewis Cogan, and one of the defendants.* warrant afterwards, and before the return of the said writ, and before the said time when, &c. in the said first Count of the said declaration mentioned, at Stamford Arundel aforesaid, in the said county, he the said Richard Crosse, esquire, so being sheriff as aforesaid, delivered to the said Charles to be by him executed according to the exigency thereof; by virtue of which said warrant, the said Charles to being bailiff as aforesaid, afterwards, and before the return of the said writ, to wit, at the said time when, &c. in the said declaration mentioned, in obedience to and for the due execution of the said warrant at the said time when, &c. and the said Hugh as his servant in his aid and assistance, and by his command entered into the said dwelling house, water-mills, orchards, gardens, stables, outhouses, and closes of land of the said John Tory, in which, &c. in the said first Count of the said declaration mentioned, the doors of the said dwelling-house and mills being open, in order to levy the debt, damages, costs, and charges aforesaid of the goods and chattels of the said plaintiff, then being therein according to the exigency and command of the said warrant, and then and there seized and took the said goods and chattels in the said first and second Counts of the said declaration mentioned, and in the introduction of this plea mentioned, then being in and upon the said dwelling-house, water-mills, orchards, gardens, stables, outhouses, and closes of land of the said plaintiff in which, &c. and carried away the same, in order by sale thereof to levy thereout the debt, damages, costs, and charges

Defendant as bailiff and the other as his servant took the goods, &c.

TRESPASS.—REPLICATION—NEW ASSIGNMENT.

charges aforesaid, in form aforesaid recovered, and did then and there by sale thereof levy the sum of twenty-nine pounds nineteen shillings and sixpence, part and parcel of the debt and damages aforesaid, and in so doing then and there necessarily and unavoidably made a little noise and disturbance in the said first Count of the said declaration mentioned, as it was lawful for them to do for the cause aforesaid, doing as little damage on that occasion as they possibly could, which are the same, &c.; whereof, &c.; and this, &c.; wherefore, &c.

VICARY GIBBS.

Replication,
issue on the *liberum tenementum*.

And the said J. T. as to the said plea of the said defendants by them secondly above pleaded in bar as to the breaking, &c. [as in plea] by the said defendants above done, says, that by reason, &c. (*precludi non*); because he says, that the said dwelling-house, water-mills, orchards, gardens, stables, outhouses, and closes of land in which, &c. in the said first Count of the said declaration mentioned, at the said times when, &c. in the said first Count mentioned, and before, were not, nor still are the dwelling-house, water-mills, orchards, stables, outhouses, closes, soil, and freehold of the said William in manner and form as the said defendants have in their aforesaid plea in that behalf above alledged; and this he prays may be enquired of by the country; and the said defendants do so like-

To 3d Plea,
issue thereon.

wife: And the said J. T. as to the said plea of the said defendants as to the breaking, &c. [as in the plea] by the said defendants above done, says, that he by reason, &c. (*precludi non*); because he says, that the said defendants at the said time when, &c. in the said first Count mentioned of their own wrong, and without any such cause as by the said defendants is in that plea above alledged, committed the aforesaid several trespasses in that third plea mentioned, in manner and form as the said J. T. hath above thereof complained against them; and this he prays may be enquired of by the country; and the said defendants do the like: And the said J. T.

To 4th Plea,
admits judgment, issuing *fiery facias*, de-
livery to the
sheriff, making
of the warrant,
and delivery to
defendant.

as to the said plea of the said defendants by them lastly above pleaded in bar as to the breaking [as in plea] says, that he by reason, &c. (*precludi non*); because he says, that true it is that the said William did recover such judgment against him the said plaintiff, and that such writ of *fiery facias* directed to the sheriff of the county of Somerset was sued out by the said William and delivered to the said sheriff, and that the said sheriff did make such warrant thereon directed to the said Lewis Cogan the younger, and the said Charles, and that such warrant was by the said sheriff directed to the said Charles to be executed according to the exigency thereof, but the said J. T. says, that the several trespasses in the said last plea of the said defendants mentioned, and thereby attempted to be justified, and for further committing whereof he the said plaintiff hath above complained against them, were committed by them the defendants at another and different time, and on another and different occasion then and there in the said last-mentioned plea mentioned, and also after the return of the aforesaid writ of *fiery facias* in that plea mentioned, and the said plea of the said defendants mentioned; and this,

New assignment
that trespasses
were committed
at other times.

TRESPASS TO LANDS, &c.—(ENTERING CLOSE.)

this, &c.; wherefore since the said defendants have not answered the said trespasses new assigned, he the said plaintiff prays judgment and his damages, by reason of the committing thereof, to be adjudged to him, &c.

S. LAWRENCE.

Not guilty to new assignment.

V. GIBBS.

This cause was called on at Lent Assizes 1788, but was referred.

Easter Term, 1. Geo. III.

LEIGH
against

WESTMORELAND, to wit. Robert

Leigh complains of Thomas Williamson, being, &c.; for that the said Thomas on the first day of December 1779, and on divers other days and times between that day and the day of exhibiting the bill of the said Robert with force and arms broke and entered the close of the said Robert called Broad Flatt, in Rutland, in the parish of Kirby Kendal, in the county of Westmoreland, and with his feet in walking trod down, spoiled, and consumed the grafs and corn, to wit, wheat, rye, barley, oats, pease, and beans of the said Robert there then growing of the value of forty shillings, and with divers cattle, to wit, horses, mares, geldings, bulls, cows, oxen, heifers, sheep, and swine, eat up, depastured, trod down, consumed, and spoiled other the grafs and corn, to wit, other wheat, &c. there also then growing, to the value of five pounds, and wheels of carts, waggon, and other carriages turned up and subverted the soil, to wit, forty perches of the soil of the same Robert there, and mowed and cut down other grafs of the said Robert of the value of five pounds there then growing, and took and carried away the same, and converted and disposed thereof to his own use, and felled and cut down the trees and underwood, to wit, twenty oak trees, twenty elm trees, twenty ash trees, twenty thorn trees, and ten cart loads of thicken wood of the said Robert there then also growing of the value of ten pounds, and took and carried away the same, and converted and disposed thereof to his own use, and broke open, broke down, spoiled, and destroyed the gates, hedges, and fences, to wit, two gates, twenty perches of the hedges, and twenty perches of the fences of the said Robert there then erected, standing, and being, and broke, spoiled, and destroyed the locks, to wit, two locks of the said Robert of the value of twenty shillings, then fixed to the said gates, and with which the said gates were then and there locked, and also drew out, broke, and destroyed the staples, to wit, two staples of the said Robert of the value of five shillings, then affixed to a certain gate-post of the said Robert there then erected, standing, and being, and other wrongs, &c. against the peace, &c. Damage, &c. Pledges, &c.

Declaration, for entering close and depasturing cattle, subverting soil with carriages, mowing grafs and carrying it away, felling timber, and breaking down hedges, &c.

JAMES WALLACE:

And

Plea, locus in quo
parcel of the
manor of Nat-
land.

And the said Thomas, &c. general issue : And the said Thomas for further plea, by leave, &c. as to all the trespasses whereof the the said Robert above complains, except the coming with force and arms, and all that is against the peace of our said late king George the Second, and of our lord the present king, saith, that the said Robert (*ad in non*) ; because he saith that the said close called Broad Flatt, in which, &c. with the appurtenances, now is, and at the said several times when, &c. was, and from time whereof the memory of man is not to the contrary, hath been lying in and parcel of the manor of Natland, in the said county of W. within which said manor there now is, and at the said times when, &c. and from time whereof the memory of man is not to the contrary, have been

Divers custo-
mary tenements
within the ma-
nor called te-
nant right.

divers customary tenants descendible, and which have descended from ancestors to heir as of the hereditary right of the tenants called tenant right, respectively held of the lord of the said manor for the time being, as of that his manor aforesaid, by divers rents and certain services, according to the custom of the said manor ; and that one Stephen Williamson, long before any of the said times when, &c. to wit, on the first of May 1750, was seised of the said close called Broad Flatt, in which, &c. with the appurtenances, being such customary tenant, as of his customary hereditary estate in form aforesaid descendible and descending according to the custom of the said manor held of the lord of the said manor as of that this manor aforesaid and parcel of the said manor, by a certain rent and certain services ; and that within the said manor there now is,

Custom within
the manor, that
the widows of
customary te-
nants should
hold the land
during their
chaste widow-
hood.

and at the said several times when, &c. was, and from time whereof, &c. there hath been a certain ancient and laudable custom there used and approved, that is to say, that the widows of every customary tenant, seised of any customary tenement lying within and parcel of the manor aforesaid, as of his customary hereditary estate in form aforesaid descendible and descending according to the custom of the said manor, hath had and held, and hath been used and accustomed, and ought to have and hold such customary tenement, with the appurtenances, whereof her husband so died seised, during her chaste widowhood, according to the custom of the said manor : And the said Thomas further saith,

Stephen Wil-
lamson seised
&c. leaving
Dorothy his wi-
dow, Jonathan
his eldest son,
and Stephen his
second son. and
other children.

that the said Stephen Williamson being so seised of the said close in which, &c. being such customary tenant as aforesaid, as of his customary hereditary estate in form aforesaid descendible and descending according to the custom of the said manor, he the said Stephen Williamson before any of the times when, &c. to wit, on the same day and year aforesaid, at Natland aforesaid, in the said county, died so seised thereof, leaving Dorothy his widow, and Jonathan W. his eldest son, and Stephen W. his second son, and divers other children lawfully begotten, after whose decease, and before any of the times when, &c. the said Dorothy Williamson, by virtue of the custom above mentioned, entered into the said close in which, &c. parcel, &c. and was seised thereof during her chaste widowhood, according to the custom of the said manor,

and

The widow en-
tered, and be-
came seised dur-
ing chaste wi-
dowhood.

and the reversion of the said close in which, &c. with the appurtenances, descended and came to the said Jonathan Williamfon as eldest fon and heir of the said Stephen Williamfon the father, according to the custom of the said manor, and the said Jonathan was seised of the reversion of the said close in which, &c. as of his customary hereditary estate in form aforesaid descendible and descending according to the custom of the said manor; and the said Dorothy being and continuing so seised of the said close in which, &c. with the appurtenances: And the said Jonathan being so seised of and in the reversion thereof as aforesaid, he the said Jonathan afterwards, and before any of the said times when, &c. to wit, on the fifth of January 1754, at Natland aforesaid, died seised of such estate of and in the said reversion, without leaving any issue of his body lawfully begotten, after whose decease the said reversion of the said close in which, &c. with the appurtenances, descended to the said Stephen Williamfon as brother and heir to the said Jonathan Williamfon, according to the custom of the said manor; whereupon the said Stephen Williamfon the son became and was seised of and in the said reversion of the said close in which, &c. with the appurtenances, as of his customary hereditary estate in form aforesaid descendible and descending according to the custom of the said manor; and that the said Dorothy Williamfon being and continuing so seised of the said close in which, &c. with the appurtenances, as aforesaid, afterwards, and before the said times when, &c. died, and the said Stephen Williamfon the son afterwards, and before any of the said times when, &c. to wit, on the same day and year last above said entered into the said close in which, &c. with the appurtenances, and was seised thereof as aforesaid, of his customary hereditary estate in form aforesaid descendible and descending according to the custom of the said manor; and the said Stephen Williamfon the son being so seised of and in the said close in which, &c. with the appurtenances, and being the occupier and possessor thereof, the said Robert claiming the said close by colour of a certain charter of demise made to him for the term of his natural life by the said Stephen Williamfon the father, in his lifetime, whereas nothing in the said close in which, &c. passed into the possession of the said Robert, by that charter entered into the said close in which, &c. before any of the said times when, &c. upon whole possession thereof the said Thomas as servant of S. W. and the said Stephen Williamfon the son, and by his command, at the said first time when, &c. re-entered into the said close in which, &c. parcel, &c. and also at the said several times when, &c. again entered into the said close in which, &c. as into the close of the said Stephen Williamfon the son, and at the said several times when, &c. with his feet in walking trod down, spoiled, and consumed the said grass and corn there then growing, and with the cattle in the said declaration mentioned eat up, de, assured, trod down, spoiled, and consumed the said other grass and corn there then also growing, as the grass and corn of the said Stephen Williamfon the son, growing in the close and customary tenement of the said Stephen Williamfon the son, and with the wheels of the said carts, waggons,

Reversion descended to Jonathan as eldest son. Jonathan Williamfon seised of the reversion.

Jonathan died seised without issue.

Reversion descended to Stephen Williamfon the son;

whereupon he became seised of the reversion.

Dorothy the widow dies;

and Stephen Williamfon became seised.

Colour given.

S. W. and the other defendant as his servant entered, &c.

TRESPASS—REPLICATION.

gons, and other carriages turned up and subverted the said soil there, as the soil of the said Stephen Williamson the son, and mowed and cut down the said other grafs there then growing, and took and carried away the same as the grafs of the said Stephen Williamson the son growing in his close and customary tenement, and felled, cut down, took, and carried away the said trees and underwood there then growing as the trees and underwood of the said Stephen Williamson the son growing in his close and customary tenement, and broke open, trod down, spoiled, and destroyed the said gates, hedges, and fences there then erected, standing, and being, as the gates, hedges, and fences of the said Stephen Williamson the son erected, standing, and being upon his close or customary tenement, and broke, spoiled, and consumed the said locks then affixed to the said gates, and with which the said Stephen Williamson the son affixed, and belonging to his gates erected, standing, and being upon his close and customary tenement, and drew out, broke, and destroyed the said staples affixed to the said gate post there then erected, standing, and being upon his close and customary tenement, as the staples of the said Stephen Williamson the son, affixed to the said gate post, there then erected, standing, and being upon his close and customary tenement, as it was lawful for him to do, and converted and disposed of the grafs so mowed and cut down as aforesaid, and also of the said trees and underwood so felled and cut down as aforesaid to his own use by the licence of the said Stephen Williamson, then first granted in that behalf at Natland aforesaid to the said Thomas, as it was lawful for him to do, which is the same trespass except as aforesaid; whereof, &c.; and this, &c.; wherefore, &c.

JAMES WALLACE.

Replication,
stating reversion
to be devisable
by custom, and
setting up title.

And the said Robert, as to the said plea of the said Thomas lastly above pleaded as to all the trespasses whereof the said Robert hath above complained, except in that plea as above excepted, saith, that he for any thing, &c. (*actio non*); because he the said Robert saith, that true it is that the said close called Broad Flatt in which, &c. with the appurtenances, now is, and at the said several times when, &c. was, and from time whereof, &c. hath been lying within and parcel of the manor of Natland, in the said county of W. within which said manor there now are, and at the said time when, &c. were, and from time whereof, &c. have been divers customary tenements descendible and descending from a ncestor to heir, as of the hereditary right of the tenants, called tenant right, respectively held of the lord of the said manor for the time being, as of that his manor aforesaid, by divers rents and certain services, according to the custom of the said manor, and that one Stephen Williamson, before any of the said times when, &c. to wit, on the first of May 1750, was seized of the said close called Broad Flatt, in which, &c. with the appurtenances, being such customary tenement, as of his customary hereditary estate in form aforesaid descendible and descending according to the custom of the said manor, held of the lord of the said manor as of that his manor

manor aforesaid, parcel of the said manor, by a certain rent and certain services, and that within the said manor there now is, and at the said several times when, &c. was, and from time whereof, &c. there hath been a certain ancient and laudable custom there used and approved of, that is to say, that the widow of every customary tenant who dies seised of any customary tenement lying within and parcel of the manor aforesaid as of his customary hereditary estate in form aforesaid descendible and descending, according to the custom of the said manor, hath had and held, and hath been used and accustomed, and yet of right ought to have and hold such customary tenement, with the appurtenances, whereof her husband so died seised during her chaste widowhood, according to the custom of the said manor; and that the said S. W. being so seised of the said close in which, &c. being such customary tenement as aforesaid as of his customary estate in form aforesaid descendible and descending according to the custom of the said manor, he the said S. W. before any of the said times when, &c. to wit, on, &c. at, &c. died seised thereof, leaving the said Dorothy W. his widow, and Jonathan W. his eldest son, and the said Stephen W. his second son, and divers other children lawfully begotten, after whose decease, and before any of the said times when, &c. the said Dorothy W. by virtue of the custom above-mentioned, entered into the said close in which, &c. parcel, &c. was seised thereof during her chaste widowhood, according to the custom of the said manor, and the reversion of the said close in which, &c. with the appurtenances, descended and came to the said Jonathan W. eldest son and heir of the said S. W. the father, according to the custom of the said manor, and the said J. W. was seised of the reversion of the said close in which, &c. with the appurtenances, as of his customary hereditary estate in form aforesaid descendible and descending, according to the custom of the said manor, in manner and form as the said Thomas hath in his said plea lastly above pleaded alleged; but the said Robert Leigh further saith, that by the custom of the said manor such customary tenements as aforesaid, with the reversion thereof, with the appurtenances, now are, and at the said times when, &c. were, and from time immemorial have been devised and deviseable by the last will and testament in writing of every such customary tenement, with the appurtenances, or of reversion thereof as aforesaid, lying within and parcel of the manor aforesaid as of his customary hereditary estate in form aforesaid, according to the custom of the same manor; and that the said Dorothy being and continuing so seised of the said close in which, &c. with the appurtenances, and the said Jonathan being so seised of the said close in which, &c. with the appurtenances, and in the reversion, being such customary tenement, and lying within and parcel of the said manor as aforesaid, he the said Jonathan Williamfon afterwards, and before any of the said times when, &c. that is to say, on the eighteenth of January 1782, at the parish of Kirkby Kendall aforesaid, duly made his last will and testament in writing, and thereby devised the said reversion of the said close

That the lands, and the reversion thereof, are by custom of the manor deviseable by will.

That during the widow's seisin J. W. being so seised of the reversion, made his will;

REPLICATION.—TITLE LESS THAN FREEHOLD.

and devised *locus in quo*, amongst other things, to his brother J. W. and his heirs, and died.

J. W. the brother, became seised of the reversion.

The widow died, whereupon J. W. the brother entered and became seised.

and being so seised died,

leaving M. W. his widow.

M. W. became seised according to custom.

Demise *locus in quo* to plaintiff for two years.

Plaintiff entered, &c.

close in which, &c. with the appurtenances (amongst other things) to his brother John Williamson, and to his heirs and assigns forever, according to the custom of the said manor, and afterwards, to wit, on the same day and year last aforesaid, at the parish aforesaid, died so seised of such his estate as aforesaid of and in the said reversion of the said close in which, &c. with the appurtenances as aforesaid, upon whose death the said John W. then and there became and was seised of the said reversion of the said close in which, &c. with the appurtenances, as of his customary hereditary estate in form aforesaid descendible and descending, and devised and devisable as aforesaid as devisee by virtue of the said devise, and according to the custom of the said manor, and that the said Dorothy W. being and continuing so seised of the said close in which, &c. with the appurtenances as aforesaid, she the said Dorothy W. afterwards, and before any of the said times when, &c. that is to say, on the first of October 1752, at the parish aforesaid died, whereupon the said John W. as devisee as aforesaid, afterwards and before any of the said times when, &c. to wit, on the day and year last aforesaid, at the parish aforesaid, entered into the said close in which, &c. with the appurtenances, and was seised thereof as of his customary estate in form descendible and descending, and devised and devisable as aforesaid by virtue of the said will, and according to the custom of the manor aforesaid: And the said Robert further saith, that the said John W. being so seised of the said close in which, &c. being such customary tenement as aforesaid as of his customary hereditary estate in form aforesaid descendible and descending, and devised and devisable as aforesaid, according to the custom of the said manor, he the said John W. afterwards, and before any of the said times when, &c. that is to say, on the first of November 1757, at the parish aforesaid died so seised thereof, leaving Mary Williamson his widow, upon whose death, and before any of the said times when, &c. the said Mary Williamson, by virtue of the custom above-mentioned, entered into the said close above-mentioned, in which, &c. parcel, &c. and at the said times when, &c. was seised thereof during her chaste widowhood according to the custom of the said manor; and the said M. W. being so seised of the said close in which, &c. with the appurtenances, in form aforesaid, she the said M. W. afterwards, and before any of the said times when, &c. to wit, on the first of January 1759, at the parish aforesaid, demise the said close in which, &c. with the appurtenances, to the said Robert Leigh, to have and to hold the same, with the appurtenances, to the said Robert Leigh from the first of May then next following, for and during and unto the full end and term of two whole years then next following, if she the said Mary W. should so long continue her chaste widowhood, by virtue of which said demise the said Robert afterwards and before any of the said times when, &c. to wit, on the second day of May 1759, entered into the said close in which, &c. with the appurtenances, and was possessed thereof until the said Thomas at the said times when, &c. wrongfully committed

TRESPASS to LANDS, &c. (ENTERING CLOSE.)

committed all the said trespasses whereof the said Robert hath above complained; without this, that the said reversion of the said close in which, &c. with the appurtenances, after the death of the said Jonathan Williamfon descended to the said Stephen W. as brother and heir of the said Jonathan W. according to the custom of the said manor, as the said Thomas hath in his said plea lastly above pleaded alledged; and this, &c.; wherefore inasmuch as the said Thomas hath in his said plea lastly above pleaded acknowledged all the trespasses, whereof the said Robert hath above complained, except as in that plea is excepted, he the said plaintiff prays judgment and his damages sustained by reason thereof to be adjudged to him, &c.

Traverse
locus in quo. in
J. W. the son
death, defend
ed to defend

A. DAWSON.

The books are very barren on this species of tenure, but it certainly arose in the northern court near Scotland for the defence of the borders; therefore in its creation unlikely even to be descendible, much less devisable, but the descent is now generally established, and perhaps the devisability also in this manor; and

I am informed by a gentleman of the north, that many of these estates to this day are not devisable, at least not without leave of the lord, and seemingly the defendant relies upon this. If the licence of the lord is necessary, it should be stated in the replication.

A. D.

SOMERSETSHIRE, to wit. John Cock complains of John Perry and Peter Coles; for that whereas the said defendants heretofore, to wit, on, &c. with force and arms, &c. broke and entered the close called, &c. of the said plaintiff, situate, lying, and being at, &c. and with their feet in walking trod down, trampled upon, consumed, spoiled, and destroyed the grafs of the said plaintiff there then growing and being of a large value, to wit, of the value of ten pounds of, &c. and also then and there cut down, pulled down, and prostrated a certain large tree then standing, growing, and being in and upon the said close of the said plaintiff, and then and there left the same felled, prostrated, and laid upon the said close, taking up room, and doing damage there to the said grafs there then springing and growing, and to the possession of the said plaintiff for a long time, to wit, from thence hitherto: And also for that the said defendants heretofore, to wit, on, &c. and on divers other days and times between that day and the day of exhibiting the bill of the said plaintiff in this behalf, with force and arms, &c. again broke and entered the said close of the said plaintiff at, &c. in, &c. and on those days and times with feet in walking trod down, trampled upon, consumed, and spoiled other the grafs of the said plaintiff there then growing and being of a large value, to wit, of the value of other ten pounds of, &c. and other wrongs to the said plaintiff then and there did, against the peace of our said lord the king, and to the damage of the said plaintiff of twenty pounds.

Declaration
against defendant
for entering
plaintiff's close,
cutting down a
tree, and leaving
it there.

T. BARROW.

TRESPASS to LANDS, &c.

Mr. Harrow, who drew the above declaration, was of opinion, that *vi et armis* could not be maintained for the loss of the tree, it being a part of the inheritance. but he thought plaintiff could support this action for the unlicensed en-

try to cut down the tree, and also for the injury he sustained in the loss of the shade, and therefore thought the proper action to be *an action on the case, and not vi et armis.*

Declaration in trespass for cutting up and pulling up divers roots and shrubs, and carrying the same away, &c.

LENOX, ESQUIRE, *against*

PLAISTED, ESQUIRE.

} THAT defendant heretofore, to wit, on, &c. with force and arms at, &c. dug up, pulled up, and rooted up divers timber, fruit, and other trees, vegetable plants, shrubs, trees, flowers, and flower roots, to wit, five hundred timber trees, &c. &c. of the said plaintiff of a large value, to wit, of the value of one hundred pounds there then growing and being, and took and carried away the same, and converted and disposed thereof to his own use: And also for that the said defendant afterwards, to wit, on, &c. with force and arms, &c. took divers other timber, fruit, and other trees, vegetable plants, shrubs, bushes, flowers, and flower roots, and divers large quantities of timber wood, underwood, and earth, to wit, five hundred other timber trees, &c. &c. of the said plaintiff of a large value, to wit, of the value of two hundred pounds there then found and being, and carried away the same, and converted and disposed thereof to his own use, and then and there did other wrongs, &c.

V. LAWES.

Declaration in trespass, *quod clausum fregit* for treading down grass, subverting soil, digging pits, removing materials, building walls, fences, &c. inclosing plaintiff's land, and putting plaintiff out of possession.

YORKSHIRE, to wit. Thomas Lister, esquire, complains of Richard Bragshaw, Robert Moon, Robert Hartley, and William Hartley, being, &c. in a plea of trespass; for that the said defendants heretofore, to wit, on, &c. at, &c. in, &c. with force and arms, &c. broke and entered the closes of the said Thomas, to wit, one close called, &c. one other close called, &c. and two other closes called, &c. there situate and being, and then and there with feet in walking trod down, trampled upon, consumed, and spoiled the grass there respectively growing and being, and then and there with certain cattle, carts, and carriages, trod down, trampled upon, consumed, and spoiled other the grass there growing and being, and then and there with the said cattle, carts, and carriages, broke up, subverted, and spoiled the soil in the said several closes, and then and there with spades, shovels, and pickaxes, subverted, dug up, took up, and removed the soil, earth, gravel, rocks, and stones, to wit, five roods of soil, five hundred cart loads of, &c. there then being in, and part of the said several closes, and then and there dug, sunk, and made divers large holes and pits in the said several closes, and left and continued the same so open and unfilled up for a long time, to wit, from thence hitherto, and then and there put, lay, and spread the said earth, gravel, rocks, and stones dispersed in and upon the said several closes, and kept and continued the same so there laid and spread for a long time, to wit, for the space of one year continually after the same

ENTERING CLOSE, &c.

same had been so dug up, subverted, and separated from the said several closes, and until the said defendants afterwards removed, led, and carried away the same then and there being of a large value, to wit, of the value of fifty pounds of lawful money of Great Britain, and converted and disposed thereof to their own use, to wit, at, &c. whereby the said plaintiff was during all that time deprived and lost the use of the herbage and pasturage of so much of the said several closes whereon the said earth, gravel, rocks, and stones so lay as aforesaid, and there wholly lost the said earth, gravel, rocks, and stones: And also for that they the said defendants heretofore, 2d Count, to wit, on, &c. and on divers other days and times between that day and the day of exhibiting the bill of the said plaintiff, at, &c. in, &c. with force and arms, &c. broke and entered certain other closes of the said plaintiff, to wit, one other close called, &c. one other close called, &c. and two other closes called, &c. there situate and being, and with feet in walking trod down, &c. the grass there respectively then growing and being at those several days and times, and with certain cattle, carts, and carriages at those several days and times trod down, &c. other the grass there then respectively growing and being, and with the said cattle, carts, and carriages at those several days and times broke up, &c. the soil in the said several closes, and with spades, &c. at those several days and times subverted, &c. great quantities of earth, gravel, rocks, and stones in and part of the said several closes, and thereby made divers large and deep holes and pits therein respectively, and left the said holes and pits there remaining open and unfilled up from the said making thereof respectively hitherto: And also for that they the said defendants heretofore, to wit, on, &c. at, &c. with force and arms, &c. broke and entered a certain other close of the said plaintiff called, &c. there situate, and with spades, &c. dug, 3d Count, for
inclosing and
keeping plain-
tiff out of poss-
ession. sunk, and made divers large holes and cuts in the said last-mentioned close, and then and there made, erected, and built, and caused and procured to be made, erected, and built divers large fences, hedges, and walls, to wit, five hundred yards of fences, five hundred yards of hedges, and five hundred yards of wall, in and upon the said last-mentioned close, and thereby then and there fenced off and inclosed great part, to wit, five roods of the said last-mentioned close, and separated the same from the rest thereby, and kept and continued the same so separated from the rest for a long time, to wit, from thence hitherto, and then and there expelled, put out, and amoved him the said plaintiff from and out of the possession, use, and occupation of the said part of his said last-mentioned close, and kept and continued him so expelled, put out, and amoved from the use, possession, and occupation thereof for a long space of time, to wit, from thence hitherto, and other wrongs to the said plaintiff then and there did, against the peace of our lord the now king, and to the damage of the said plaintiff of twenty pounds; and therefore he brings, &c.

T. BARROW.

TRESPASS to LANDS—HOUSES—

Declaration against defendant for pulling down the shed of plaintiff, and building a house in the place, whereby plaintiff is hindered from enjoying his close, &c. &c.

J. C. complains of Hugh William Anderfon, John Alefounder and James Mackintosh ; for that the said defendants heretofore, to wit, on, &c. at, &c. with force and arms broke and entered the close of the said plaintiff there situate and being called the Garden, and then and there trod down, trampled upon, crushed, damaged, and spoiled the grass of the said plaintiff there then growing and being of a large value, to wit, the value of forty pounds of lawful money of Great Britain, and then and there pulled down, threw down, prostrated, and destroyed a certain erection or building of the said J. C. of a large value, to wit, of the value of thirty pounds of like lawful, &c. then and there erected and built called the Shop otherwise the Shed, and the materials thereof coming, to wit, two cart loads of bricks, &c. of the said plaintiff of a large value, to wit, of the value of twenty pounds of like, &c. took and carried away, and converted and disposed thereof to their own use, and then and there dug up, subverted, raised, and spoiled the soil and earth, together with other the grass of the said plaintiff then and there respectively growing and being of a large value, to wit, of the value of twenty pounds of like lawful money, and then and there erected and built, and caused and procured to be erected and built a great part of a certain messuage or dwelling-house in and upon the said close, and then and there expelled, put out, and amoved the said plaintiff from and out of the possession, use, and occupation of a great part of his said close, and kept and continued him so expelled, put out, and amoved, and the said part of the said messuage or dwelling-house in and upon the said close, and then and there expelled, put out, and amoved the said plaintiff from and out of the possession, use, and occupation of a great part of his said close, and kept and continued him so expelled, put out, and amoved, and the said part of the said messuage or dwelling-house so by them erected on the said close as aforesaid, from thence for a long time, to wit, from thence hitherto, whereby the said plaintiff hath during all that time lost, and by reason of the said last-mentioned building will hereafter lose and be deprived of the free and entire use, occupation, and enjoyment of his said close: And for that the said defendants heretofore, to wit, on, &c. in, &c. with force and arms, &c. seized, took, and carried away divers goods and chattels, to wit, twenty cart loads of soil, &c. of the said plaintiff there then found and being of a large value, to wit, of the value of, &c. of like lawful, &c. and converted and disposed thereof to their own use, and other wrongs to the said plaintiff then and there did, against the peace of our lord the king, and to the damage of the said plaintiff of two hundred pounds; and therefore he brings his suit.

1st, Not Guilty as to the whole: 2d, as to the said breaking, &c. in the said first Count mentioned above supposed to have been committed by said H. A. &c. they the said H. A. &c. by leave of, &c. say that (*assio non*); because they say, that W. B. and R. M. long before the said time when, &c. in the said first Count of the said declaration mentioned, to wit, on, &c. at, &c. were seised in their demesne as of fee (amongst other things) of and in the said close in the said first Count of the said declaration mentioned, and in which, &c. with the appurtenances, and being so thereof seised, afterwards, and long before the said time when, &c. in the said first Count of the said declaration mentioned, to wit, on, &c. at, &c. by a certain indenture then and there made between the said W. B. and R. M. of the one part, and the said H. of the other part, one part of which said indenture, sealed with the seal of the said W. B. and R. M. they the said H. A. &c. now bring here into court, the date whereof is the day and year last aforesaid, they the said W. R. and R. M. for the considerations therein mentioned, did demise, lease, and to farm let unto the said H. amongst other things, the said close in which, &c. with the appurtenances, to have and to hold to the said H. his executors, administrators, and assigns, from the feast day of the Annunciation of the Blessed Virgin Mary then last past, for, and during, and unto the full end and term of sixty-five years from thence next ensuing and fully to be complete and ended; by virtue of which said demise he the said H. afterwards, and long before the said time when, &c. to wit, on, &c. at, &c. entered into and upon the said close in which, &c. with the appurtenances, and became and was possessed thereof for the said term so to him thereof demised, and being so thereof possessed, the said plaintiff claiming the said close in which, &c. with the appurtenances, under colour of a certain charter of demise pretended to be thereof made by the said W. and R. M. to him the said plaintiff for the term of his natural life before the said demise so as aforesaid made by the said W. B. and R. M. to the said H. whereas nothing of the said close in which, &c. with the appurtenances, ever passed into the possession of the said plaintiff by virtue of that charter of demise afterwards, and before the said time when, &c. in the said first Count of the said declaration mentioned, and during the continuance of the said term so demised to the said H. as aforesaid entered into the said close in which, &c. with the appurtenances, and was thereof possessed, upon whose possession the said H. in his own right, and to the said W. A. &c. as the servants of the said H. and by his command, at the said time when, &c. in the said first Count of the said declaration mentioned, entered into and upon the said close in which, &c. with the appurtenances, as being the close of the said H. and trod down and trampled upon, crushed, damaged, and spoiled the grass there growing and being, as being the grass of the said H. growing and being in his said close, and because the said erection or building in the said first Count of the declaration mentioned before the said time when,

Plea 1st, Not guilty; 2d, that A. B. seised of the close, and demised same to one of the defendants, by means whereof he entered, giving colour to the plaintiff under a pretended demise from A. B. to the plaintiff, and that the defendant and his servants, because the shed was wrongfully erected and done damage, one defendant in his own right, and the rest as his servants, and by his command, pulled down the shed, and removed the materials to a proper place for the use of plaintiff, and that they erected the house, as it was lawful for them to do.

(a) And licence in law (to abate nuisance.)

TRESPASS.—REPLICATION—TITLE LESS—

&c. in that Count mentioned, had been erected, and was then wrongfully standing and being in and upon the said close, taking up room there, and incumbering the same, and doing damage there to the said H. he the said H. in his own right, and the said W. A. &c. as the servants of the said H. and by his command, at the said time when, &c. in the said first Count of the said declaration mentioned, pulled down, threw down, prostrated, and destroyed the said erection or building and the materials thereof coming in the said first Count also mentioned, and took and carried away from and out of the said close to a proper and convenient place near the same, and there deposited and left the said materials to and for the use of the said plaintiff, and dug up, subverted, raised, and spoiled the grass and earth, together with other the grass there respectively growing and being in the said first Count mentioned as being the soil, earth, and grass of the said H. growing and being in the said close, and erected and built, and caused and procured to be erected and built part of the said messuage or dwelling-house in the said first Count mentioned in and upon the said close, and expelled, put out, and amoved the said plaintiff from and out of the possession, use, and occupation of part of his said close, and kept and continued him so expelled, put out, and amoved, and the said part of the messuage or dwelling-house so erected and built on the said close as aforesaid for the said space of time in the said first Count of the said declaration mentioned, as it was lawful for him to do for the cause aforesaid, which are the same breaking and entering the said close in the said first Count of the said declaration mentioned, and treading down, &c. for the said space of time in the said first Count mentioned, whereof the said plaintiff hath above complained against the said H. W. A. &c.; and this they the said defendants are ready to verify; wherefore they pray judgment if the said plaintiff ought to have his aforesaid action thereof maintained against them, &c.

WM. BALDWIN.

Replication to the last plea, admitting that A. B. was seized, and demised the premises to defendant, who afterwards demised same to plaintiff, by means of which he entered; and that as to the breaking, &c. pulling down the shed, carrying away the materials, erecting the house, that defendants do

And as to the said plea of the said defendants by them lastly above pleaded in bar as to the breaking and entering, &c. above committed by the said defendants, he the said plaintiff says, that notwithstanding any thing in that plea alledged, he ought not to be barred from having or maintaining his aforesaid action thereof against them; because he says, that the said W. B. and R. M. in the said plea mentioned were seized in their demesne as of fee of and in the said close in the said first Count of the said declaration mentioned in which, &c. with the appurtenances, and that they demised the same, with the appurtenances, unto the said H. in manner and form as the said H. W. &c. have above in that plea alledged; yet the said plaintiff in fact further says, that after the making of the said demise to the said H. and before the said time when, &c. in the said first Count of the said declaration mentioned, to wit, on, &c. at, &c. by a certain indenture then made between the said H. of the one part, and the said plaintiff

THAN FREEHOLD—REJOINDER.

13

plaintiff of the other part (one part of which said indenture, sealed with the seal of the said H. and bearing date the day and year last aforesaid, the said plaintiff now brings into court here), he the said H. for the consideration therein mentioned, did demise, lease, set, and to farm let unto the said plaintiff (amongst other things) the said close in the first Count of the said declaration mentioned in which. &c. with the appurtenances, to have and to hold the same, with the appurtenances, unto the said plaintiff, his executors, administrators, and assigns, from the feast day of St. M. which was A. D. 1781, for and during, and unto the full end and term of eighty-three years and one half wanting three days from thence next ensuing and fully to be complete and ended; by virtue of which said demise he the said plaintiff afterwards, and before the said time when, &c. in the said first Count mentioned, to wit, on, &c. at, &c. entered into and upon the said close so to him demised as aforesaid, and in which, &c. with the appurtenances, and became and was thereof possessed for the said term so thereof demised to him as aforesaid, and so remained and continued from thence until and at the said time when, &c. in the said first Count of the said declaration mentioned, when they the said defendants, of their own wrong, broke and entered the said close in the said first Count of the said declaration mentioned, and trod down, trampled upon, consumed, damaged, and spoiled the grass there growing and being, and pulled down, threw down, prostrated, and destroyed the said erection or building in that Count mentioned, and the materials thereof took and carried away, and dug up and subverted, raised, and spoiled the soil and earth, together with other the grass there respectively growing and being, and erected and built, and caused and procured to be erected and built part of the said messuage or dwelling-house in the said first Count mentioned in and upon the said close, and expelled, put out, and removed the said plaintiff from and out of the possession, use, and occupation of part of his said close, and kept and continued him so expelled, put out, and removed, and the said part of the said messuage or dwelling-house so erected and built on the said close as aforesaid for the said space of time in the said first Count mentioned in manner and form as the said plaintiff hath above thereof complained against them; and this he is ready to verify; wherefore inasmuch as the said defendants have above acknowledged the said trespass, he the said plaintiff prays judgment and his damages, by him sustained on occasion of the committing thereof, to be adjudged to him, &c.

SAM. SHEPPERD.

And the said defendants, as to the said plea of the said plaintiff by him above pleaded by way of reply to the said plea of the said defendants by them lastly above pleaded in bar as to the breaking, &c. above supposed to have been committed by the said defendants, say, that the said plaintiff, by reason of any thing in his said plea so by him pleaded by way of reply as aforesaid alledged, ought not to have his aforesaid action thereof maintained against them;

because they say, that he the said H. did not demise, lease, set, or to farm-let unto the said plaintiff the said close in the said first Count in the said declaration mentioned in which, &c. with the appurtenances, in manner and form as the said plaintiff hath above in that behalf alledged, and of this they put themselves upon the country, &c. and the said plaintiff doth the like, &c. therefore as well to try this issue as the said other issue above joined between the said parties, let a jury come before our lord the king at Westminster on Monday, &c. by whom, &c. who neither, &c. to recognize, &c. because as well, &c. the same day is given to the parties there, &c.

(a) Declaration, plaintiff was against } CHESHIRE, to wit. Thomas Simcock, late
 possessed of } of, &c. was attached to answer William Dooler in a
 lands which he } SIMCOCK. } plea of trespass on the case; and thereupon the said
 let to defendant } William, by A. B. his attorney, complains, (1) *that whereas,*
 as tenant at will; *before and at the time of the committing the grievance hereafter*
 defendant cut *next mentioned, he the said William was and from thence hitherto*
 down the trees *hath been, and still is seised in his demesne as of fee of and in*
 that were grow- *divers lands, with the appurtenances, situate, &c. in the parish of,*
 ing, and did *&c. in the said county of Cheshire, which said lands before and*
 destroy the *at the time of committing the grievance hereafter next mentioned, were*
 hedges, &c. &c. *and from thence hitherto have been, and still are in the possession of*
 (x) "and where- *the said Thomas as tenant thereof, to wit, as tenant from year to*
 as the said } *year thereof to the said William at and under a certain yearly rent*
 Thomas here- *of twenty pounds, payable by the said Thomas to the said William for*
 tofore, to wit, *the same; yet the said Thomas contriving, &c. the said William*
 on, &c. was *in his said (2) estate and interest of and in his said lands, with the*
 and from thence *appurtenances, whilst he the said Thomas was so possessed of*
 hitherto hath *the said (3) lands, with the appurtenances, and whilst he the said*
 been, and still is *William was so seised thereof as aforesaid, to wit, on, &c. and*
 the occupier and *between the time and the commencement of this suit at, &c. wrong-*
 possessor of cer- *fully and unjustly cut down, pulled down, dug up, rooted up,*
 tain other lands, *prostrated, and destroyed, and wrongfully and unjustly caused and*
 with the appur- *suffered to be cut down, &c. divers large quantities of withies*
 tenances, of the *and willows, to wit, five hundred withies and five hundred willows*
 said William, *there then growing and being on a certain part of the said (4)*
 situate in the *lands, and separating, dividing, and defending the same from a*
 parish and county *certain large pit on the other side thereof, and thereby then and there*
 aforesaid, as *left the same open to the said pit, and then and there wrongfully*
 tenant thereof to *and unjustly dug up, tore up, rooted up, subverted, damaged, and*
 him the said *destroyed, and wrongfully and unjustly caused and procured to be*
 William, who *dug up, &c. a large quantity of the hedges and fences there then*
 during all the *respectively growing and being, and of and belonging to the said*
 time aforesaid *(5) lands and to the freehold thereof, to wit, fifty perches (6)*
 was and still is *of a certain hedge there then growing and being on a certain part*
 entitled to the *of the said lands; and separating and dividing the same from certain*
 reversion there- *large common or waste lands thereto contiguous and adjoining, and*
 of next and im- *mediately after the determina-*
 mediately after *tion of the said*
 the determina- *tenancy thereof*
 tion of the said *at the said*
 tenancy thereof *Thomas;*"

(2) "reversionary interest." (3) "last-mentioned" (4) "last-mentioned" (5) "last-mentioned" (6) "of the hedges"

(2) This is a declaration in *Tort to Corporeal Rights* in nature of waste, and not merely trespass, therefore mislaid. (See Index to Tort, Vol. VIII.

divers,

divers, to wit, fifty perches of other the hedges, and fifty perches of other the fencing of and belonging to the said (7) lands, with the appurtenances, and thereby then and there left and laid open the same respectively, and then and there took and carried away the said withies and willows, and the materials of the said hedges and fencing, to wit, ten cart loads of wood, ten cart loads of bushes, and ten cart loads of underwood of the said William of a large value, to wit, of the value of one hundred pounds of lawful money of Great Britain, and converted and disposed thereof to his own use, to wit, at, &c.; whereby and by reason of which said several (8) premises, the said William was and still is greatly injured and damaged in his said estate and interest of and in his said (9) lands, with the appurtenances, to wit, at, &c. &c. : And whereas, &c. &c. [Go on with the second Count same as the first, omitting the parts in Italic, and inserting what is in the margin:] And whereas also the said William heretofore, to wit, on, &c. was lawfully possessed of divers other goods and chattels, to wit, one hundred timber trees, one hundred other withies, one hundred other willow trees, one hundred other trees, ten other cart loads of bushes, ten other cart loads of underwood, and ten other cart loads of wood of a large value, to wit, of the value of one hundred pounds of like lawful money of Great Britain as of his own proper goods and chattels; and being so possessed thereof, he the said William afterwards, to wit, on, &c. casually lost the said goods and chattels out of his hands and possession, and they afterwards, to wit, on, &c. at, &c. came into the possession of the said Thomas by finding; yet the said Thomas well knowing the said goods and chattels to be the goods and chattels of the said William, and to him of right to belong and appertain, but contriving, &c. the said William hath not as yet delivered the said goods and chattels or any part thereof to him the said William, although often requested so to do; but on the contrary, the said William saith, that the said Thomas afterwards, to wit, on, &c. at, &c. converted and disposed of the said goods and chattels to his own use, to the damage of the said William of two hundred pounds; and therefore he brings his suit.

tioned"
(8) "last-men-
tioned"
(9) "reversion-
ary interest in
the said last-
mentioned"
3d Count.

V. LAWES.

CASE. Defendant, being tenant from year to year to plaintiff, committed waste (or trespass) in cutting down several withies or willows, and also a hedge, thereby laying the freehold open to the waste land, though that front of the estate to which the freehold is now laid open has been lately inclosed. Note. The withies or willows grew along the side of a pit, and were a defence against the same, and the hedge only to the waste. Plaintiff unadvisedly since the damage was done, and a little time before the writ was sued out, received half a year's rent due the twenty fifth of March.

Qu. Is the damage above stated sufficient to maintain an action, and if so, is the plaintiff's acceptance of the rent a bar to the same or not, and if not, how would you advise the plaintiff to declare, whether in action of trespass on the case or waste, defendant being little more than tenant at will, viz. from year to year under no particular agreement, but a certain rent, or how otherwise would you advise the plaintiff to proceed?

TRESPASS TO LANDS—(ENTERING CLOSE).—

I am of opinion that under the circumstances here stated, the plaintiff may maintain an action upon the case in nature of waste for the damage done to his reversionary interest by the cutting down of the willows, trees, and other

fencing. The acceptance of rent since the injury is not material; certainly not as a bar to the action, whatever effect it may have in mitigation of damages if it was received without complaining of the injury.

V. LAWES.

Declaration for breaking and entering divers closes of plaintiff in the occupation of different people, and with feet in walking and with cattle depasturing, spoiling the grafs, and with the wheels of carriages subverting the soil, &c.

STACEY
against

LUDLOW AND ANOTHER.

that whereas the said defendants on, &c. and on divers other days and times between that day and the day of exhibiting the bill of the said plaintiff, with force and arms, broke and entered the closes, to wit, &c. of the said plaintiff, in the parish of, &c. in, &c. and divers other closes or pieces or parcels of ground of the said plaintiff respectively lying and being dispersed in a certain large common field called, &c. in the parish and county aforesaid, that is to say, one piece or parcel of ground in the common field adjoining towards the north on certain land there in the occupation of one H. T. and towards the west on certain land there, in the occupation of one E. T. and one other close or piece or parcel of ground, lying and being in the said common field, called, &c. adjoining towards the north on certain land there, in the occupation of one J. L. towards the east on certain other land there in the occupation of the said E. T. towards the west on certain land there in the occupation of the said J. L. and towards the south on a certain common king's highway leading between H. in the said county of M. and C. in the same county, and divers, to wit, twenty-five closes or pieces or parcels of ground of the said plaintiff, lying and being dispersed in a certain other large common field, in the parish and county aforesaid called, &c. and with feet in walking then and there trod down, trampled upon, consumed, and spoiled the turnips, grafs, and corn, to wit, wheat, rye, barley, oats, beans, and pease of the said plaintiff of the value of one hundred pounds then respectively growing and being in his said closes and pieces or parcels of ground, and with certain cattle, to wit, horses, mares, geldings, bulls, oxen, cows, swine, and sheep then and there depastured, eat up, trod down, consumed, and spoiled other turnips, grafs, and corn, to wit, &c. of the said plaintiff of the value of one hundred pounds there then also respectively growing and being in the said closes and pieces or parcels of ground, and with the wheels of waggons, carts, and carriages dug up, tore up, subverted, and spoiled the soil, to wit, twenty perches of the soil of the said plaintiff in his said closes or pieces or parcels of ground respectively, and then and there did other wrongs to the said plaintiff against the peace of our said lord the king, and to the damage of the said plaintiff of two hundred pounds; and therefore, &c.

V. LAWES.

PLEA—RIGHT OF WAY PRIVATE—BY GRANT.

139

First plea, the general issue of *non cul.*; And for further plea in this behalf as to the breaking and entering the said close of the said plaintiff in the said declaration mentioned called the Two Acres under the Elms in the Middie Veer, and the said two closes respectively called, &c. and with feet, &c. and with horses, &c. part of the said cattle in the said declaration mentioned depasturing, &c. and with the wheels, &c. digging up in his said last-mentioned closes by the said defendants above supposed to have been done, they the said defendants, by leave of the court, &c. say, that the said plaintiff ought not to have or maintain his aforesaid action thereof against them; because they say, that long before and at the said several times when, &c. one C.M. was, and from thence hitherto hath been, and still is seised in his demesne as of fee of and in a certain other piece of land called, &c. with the appurtenances in the parish aforesaid †, and that the said C. M. and all *those whose estate* he now has, and at the said several times when, &c. had of and in the said last-mentioned piece of land called, &c. with the appurtenances, for the time being, from time whereof the memory of man is not to the contrary, have had, and have been used and accustomed to have, and of right ought to have had, and the said C. M. being so seised as aforesaid, still of right ought to have for himself and themselves, and for his and their farmers and tenants, occupiers of the said last-mentioned piece of land called, &c. with the appurtenances, for the time being, a certain way from the common king's highway at the parish aforesaid, leading from, &c. to, &c. into, through, and over the said close in which, &c. called, &c. and the said two closes respectively called, &c. unto the said piece of land of the said C. M. and from thence so back again in the same way to the said common king's highway at, &c. to go, return, pass, and repass with their servants, and with their carriages drawn by their cattle every year at all times of the year as often as need or occasion required, for the necessary and convenient cultivation, improvement, and enjoyment of the same piece of land of the said C. M.: And the said defendants further say, that the said C. M. being so seised of and in his said piece of land, with the appurtenances, as aforesaid, before the said first time when, &c. to wit, on, &c. at, &c. demised the said piece of land, with the appurtenances, amongst other things to the said defendants, to hold the same to him the said defendant from the said, &c. for the space of one whole year then next following, and so on from year to year for so long as the said C. M. and the said defendants should please; by virtue of which said demise the said defendants afterwards, and before the said first time when, &c. to wit, at, &c. entered into the said last-mentioned piece of land, with the appurtenances, and became and was, and from thence hitherto hath been and still is possessed: And the said defendants further say, that before the said several times when, &c. the said plaintiff had caused the way of the said defendants in the same close called, &c. and the said two closes respectively called, &c. to be ploughed up and sown with corn, and the corn so sown before and at

Pls. Right of way private by grant.

TRESPASS.—PLEA—RIGHT OF WAY—

at the said several times when, &c. was standing and growing thereon, so that the said defendant could not conveniently have or use his same way there, and the said plaintiff thereupon a little before the said first time when, &c. to wit, on, &c. in the said declaration mentioned, assigned a certain other way in and through a certain part of the said close called, &c. and of the said two closes respectively called, &c. to be used by the said defendant for and in lieu of the said way to which he was entitled as aforesaid; and the said defendant being so possessed of the said piece of land so demised to him as aforesaid, he the said W. in his own right, and the said James as his servant, and by his command at the said several times when, &c. entered into the said three last-mentioned closes in which, &c. § *with the said carts, waggons*, and other carriages in the said declaration mentioned, being the carts, &c. of the said defendant, and with the said horses, &c. part of the said cattle in the said declaration mentioned, being the cattle of the said defendant drawing his said carts, &c. to use their said way so assigned as aforesaid for and in lieu of his said way, to which he was otherwise entitled as aforesaid, and did therewith pass and repass from the said common king's highway at, &c. into, through, and over the said three last-mentioned closes in which, &c. in the said way so assigned there to the said piece of land so demised to the said defendant as aforesaid, and from thence back again in the said way so assigned as aforesaid to the said common king's highway at, &c. for the necessary and convenient cultivation, improvement, and enjoyment of the said piece of land so demised to the defendant as aforesaid, they the said defendants using the said way so assigned there as it was lawful for them to do for the cause aforesaid, and in so doing they the said defendants did necessarily and unavoidably at the said several times when, &c. with their feet in walking tread down, trample upon, consume, and spoil a little of the turnips, grass, and corn of the said plaintiff in his said three last-mentioned closes in the said way so assigned as aforesaid there then growing and being, and with the said horses, &c. did necessarily tread down, &c. a little of the other turnips, &c. of the said plaintiff in the same way so assigned as aforesaid, there then also growing and being in the said closes, &c. in passing, &c. along and through the said way so assigned as aforesaid there at the said several times when, &c. by stealth, and against the will of the said defendants, snatched, depastured, &c. a little of the other turnips, &c. in the same way there, and on the sides thereof also then growing and being, and with the wheels of the said carts, &c. the said defendants, at the said several times when, &c. in passing and repassing in and along the same way in the said three last-mentioned closes in which, &c. did necessarily and unavoidably tear up, &c. a little of the soil of the said plaintiff there, doing as little damage there to the said plaintiff as on that occasion they possibly could, which are the same trespasses in the introduction to this plea mentioned, and this the said defendants are ready to verify, &c. &c.: And for further plea as to, &c. (*actio non*); because they say, that be-
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fore and at the said several times when, &c. the said close called the Two Acres under the Elms in the Middle Veers, and the said closes respectively called the Two Acres in the Middle Veer, and the said close called the Four Acres in the Hitching, were and now are situate and being dispersed in and were and are part and parcel of the said large common field called Westfield, and that long before and at the said several times when, &c. the said C. M. was, and from thenceforth hitherto hath been and still is seised in his demesne as of fee of and in a certain other piece of land called the Two Long Acres, with the appurtenances, at, &c. and part and parcel of the same common field, and that the said C. M. and all those whose estate, &c. &c. [as in page 139 from this mark † to page 140 to this mark ‖, then proceed as follows]: And also a certain part of the said close called the Four Acres in the Hitching, to be used by the said William for and in lieu of the said last-mentioned way to which he was entitled as aforesaid; and the said William being so possessed of the said piece of land so demised to him as last aforesaid, he the said William in his own right, and the said James as his servant, and by his command at the said several times when, &c. entered into the four last-mentioned closes in which, &c. with the said carts, waggons, &c. &c. [as in page 140 from this mark § to the end of the plea, only instead of saying *three* last-mentioned closes say *four* last-mentioned closes]: 5th Plea, right of common of pasture. And for further plea in this behalf as to, &c. [Fourth plea was a plea of licence, &c.]: And for a further plea in this behalf as to, &c. (*actio non*); because they say, that as well the said last-mentioned close in the said declaration mentioned called the Two Acres in the Middle Veer, and the said other closes in which, &c. respectively called the Acre in the Upper Veer, the Half Acre in the Upper Veer, the Hill in the Upper Veer, the Yard in Purlock, and the Acre in Purlock, as the said closes or pieces or parcels of land of the said Richard in the said declaration mentioned to be respectively lying and being dispersed in the said common field called the Westfield are, and at the said several times when, &c. were, and from time whereof the memory of man is not to the contrary hitherto have been part and parcel of the said common field called Westfield, in the liberty of Eye and Dunston, in the said parish of, &c. and situated and being not in, but in other parts thereof than a certain part of that common field called, &c. and from that time whereof, &c. hitherto the said common field called Westfield, whereof, &c. except the said part whereof called the Hitching, hath been tilled, manured, and husbanded, and hath been used and accustomed to be tilled, &c. and yet of right ought to be tilled, &c. in such manner that the same in three years successively of every four years of the said time hath and ought to have been sown with corn or grain, and hath and ought to have lain fallow every fourth or succeeding year, that is to say, from the tenth of October until and upon the tenth of October then next following, and that long before and at

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the said several times when, &c. the said C. M. was, and from thenceforth hitherto hath been and still is seised in his demesne as of fee of and in divers, to wit, one hundred acres of land, with the appurtenances, lying and being in the said liberty of Eye and Dunston, in the said parish of, &c.: And the said William and James further say, that the said C. M. and all those whose estate he now has, and at the said several times when, &c. and of and in his said last-mentioned land, with the appurtenances, for the time being, from time whereof, &c. have had and have used, and been accustomed to have, and of right ought to have had, and the said C. M. being so seised as last aforesaid, still of right ought to have for himself and themselves, his and their tenants and farmers, occupiers of the said last-mentioned land, with the appurtenances, for the time being, common of pasture in, upon, and throughout the said common field called Westfield, whereof, &c. the same part of the said field called the Hitching, and his and their own land in the residue of the same field only excepted, for all his and their cattle levant and couchant in and upon the said last-mentioned land, with the appurtenances, whereof the said C. M. was so seised as last aforesaid every year when the said common field called West Field, whereof, &c. or some part thereof, except the said part thereof called the Hitching, hath been resown with grain or corn, and in every year when the said common field called Westfield, whereof, &c. except the said part thereof called the Hitching, hath not been, nor ought to have been sown with corn or grain, but hath or ought to have lain fallow according to the usage and course of husbandry aforesaid at all times of such year as to the said last-mentioned land of the said C. M. with the appurtenances, belonging and appertaining: And the said William and James further say, that the said C. M. being so seised of and in the said last-mentioned land, with the appurtenances, as aforesaid, and before the said first time when, &c. to wit, on, &c. at, &c. demised the same, with the appurtenances, to the said William, to hold the same to him the said William from, &c. in the year last aforesaid for the space of one whole year then next following, and so on from year to year for so long a time as the said C. M. and the said William should please; by virtue of which said last-mentioned demise the said William afterwards and before the said first time when, &c. to wit, on, &c. entered into the said last-mentioned land, with the appurtenances, and became and was, and from thence hitherto hath been and still is possessed thereof: And the said William and James further say, that the said common field called Westfield, whereof, &c. except the said part thereof called the Hitching, according to the usage and course of husbandry in that behalf aforesaid, ought not to have been so sown with corn or grain, but ought to have lain fallow from the tenth of October 1785 until and upon the tenth of October in the said year 1786, the same time being the fourth year in that behalf aforesaid; and the said William being so possessed of the said last-mentioned land, with

the appurtenances, so demised to him as last aforesaid, he the said William in his own right, and the said James as his servant, and by his command during the same year and time when the said common field whereof, &c. except the said part thereof called the Hitching, ought not to have been sown with corn or grain, but ought to have lain fallow as last aforesaid, that is to say, at the said several times when, &c. put the said cattle in the said declaration mentioned, the same being then the cattle of the said William levant and couchant in and upon his said last-mentioned land, with the appurtenances, into and upon the said closes in which, &c. in this plea mentioned, parcel, &c. to feed and depasture there and in the other parts of the said common field called Westfield, &c. except the said part of the said common field called the Hitching, and except the said William's own land in the residue of the said common field, and to use his said common of pasture there, and the said last-mentioned cattle at the said times when, &c. the same being during the same year and time when the said common field called Westfield, whereof, &c. except the said part thereof called the Hitching, ought not to have been sown with corn or grain, but ought to have lain fallow as last aforesaid, were in the said closes in which, &c. in this plea mentioned, parcel, &c. feeding and depasturing there, and using the said common of pasture there as it was lawful to do for the cause in that behalf aforesaid; and the said William and James in so putting the said cattle into the said close in which, &c. in this plea mentioned, parcel, &c. as aforesaid for the purpose last aforesaid, did necessarily and unavoidably with their feet in walking tread down, trample upon, consume, and spoil a little of the turnips, grass, and corn of the said Richard then growing in the said closes in which, &c. in this plea mentioned, parcel, &c. doing as little damage there to the said William as on those occasions they possibly could, which are the same trespasses in the introductory part to this plea mentioned; and this, &c.; wherefore, &c.: And for further plea in this behalf as to &c. (*actio non*); because they say, that as well the said closes in the said declaration mentioned called the Acre against Fox Hill, and the Yard upon the Hill, as the said closes or pieces or parcels of ground of the said Richard in the said declaration mentioned to be respectively lying and being dispersed in the said common field called Dean Field, are, and at the said several times when, &c. were, and from time whereof, &c. hitherto have been part and parcel of the said common field called Dean Field, and situate, lying, and being in the said liberty of Eye and Dunston in the said parish of, &c. in, &c.: And the said William and James further say, that long before and at the said several times when, &c. the said C. M. was, and from thenceforth hitherto hath been and still is seised in his demesne as of fee of, and in divers, to wit, one hundred acres of land, with the appurtenances, situate, lying, and being in the said liberty called, &c. in said parish of, &c. and that the said C. M. and all those whose estate

PLEA—RIGHT of COMMON of PASTURE.

estate he hath, and at the said several times when, &c. had in his said last-mentioned land, with the appurtenances, from time whereof, &c. have had, and have used and been accustomed to have, and of right ought to have had, and the said C. M. being so seised as last aforesaid, still of right ought to have for himself and themselves, his and their farmers and tenants, occupiers of his said last-mentioned land, with the appurtenances, for the time being, common of pasture in, upon, and throughout the said common field called Dean Field, whereof, &c. (his and their own lands only excepted) for all his and their cattle levant and couchant in and upon the said last-mentioned land, with the appurtenances, whereof he was so seised as aforesaid yearly and every year in the manner and form following, to wit, in every year when the said common field called D. Field, whereof, &c. or any part thereof hath been sown with corn and grain from the time that all the corn and grain sown in the said common field called D. Field, whereof, &c. or some part thereof hath been re-sown with corn or grain, and in every year when neither the said common field called D. Field, whereof, &c. nor any part thereof hath been sown with corn or grain at all times of every such year as to the said last-mentioned land, with the appurtenances, whereof the said C. M. was so seised as aforesaid belonging or appertaining: And the said William and James further says, that the said C. M. being so seised of and in the said last-mentioned land, with the appurtenances, as aforesaid before the said first time when, &c. to wit, on, &c. demised the same, with the appurtenances, to the said William, to hold the same to him said William from, &c. for the space of one whole year then next following, and so on from year to year for so long a time as the said C. M. and the said William should please; by virtue of which said last-mentioned demise the said William afterwards and before the said first time when, &c. to wit, on, &c. entered into the said last-mentioned land, with the appurtenances, and became and was, and from thenceforth hath been and still is possessed thereof as aforesaid at the said several times when, &c. of all the corn and grain then last growing in the said common field called Dean Field whereof, &c. have been cut down and carried away from thence, and no other corn or grain having been re-sown in or upon the said common field called Dean Field, or any part thereof, at the said several times when, &c. or any of them, he the said William in his own right, and the said James as his servant, and by his command at the said several times when, &c. did put the said cattle in the said declaration mentioned, being the cattle of the said William levant and couchant upon the said last-mentioned land so demised as last aforesaid into and upon the said closes in which, &c. in this plea mentioned, parcel, &c. to feed and depasture the grafs then growing there and in the other parts of the said common field called Dean Field, whereof, &c. except the said William's own land therein to use his said common of pasture there, and the said last-mentioned cattle at the said several times when, &c. no corn or grain being at any of those times re-sown in

or upon the same common field or any part thereof were in the said closes in which, &c. in this plea mentioned, parcel, feeding and depasturing the grafs there then growing, and using the same common of pasture there as it was lawful to do for the cause aforesaid, and the said William and James so putting the said last-mentioned cattle into the said closes in which, &c. in this plea mentioned, parcel, &c. as aforesaid, for the purpose last aforesaid, did necessarily and unavoidably with their feet in walking tread down, consume, trample upon, and spoil a little of the grafs of the said Richard then growing in the said closes in which, &c. in this plea mentioned, parcel, &c. doing as little damage there to the said Richard as on those occasions they possibly could, which are the same trespasses in the introduction to this plea mentioned; and this, &c.; wherefore, &c. if, &c.: And for further plea in this behalf as to, &c. (*actio non*).

G. S. HOLROYD.

LANCASHIRE, to wit. - J. B. complains of J. L. being, &c. in a plea of trespass; for that he the said defendant heretofore, to wit, on, &c. with force and arms, &c. broke and entered a certain close of the said plaintiff situate at, &c. and then and there with feet in walking trod down, trampled upon, consumed, and spoiled the grafs of the said plaintiff there then growing and being of a large value, to wit, of the value of twenty pounds of lawful money of Great Britain, and then and there with force and arms, &c. seized, took, and led away a certain mare of the said plaintiff there then being, and depasturing in the said close of a large price and value, to wit, of the price or value of fifty pounds and kept and detained the said mare, and still keeps and detains the same: And also for that the said defendant heretofore, to wit, on, &c. at, &c. with force and arms, &c. seized, took, and led away a certain other mare of the said plaintiff there then found and being of a large price or value, to wit, of the price or value of fifty pounds of like lawful money, and kept and detained the same, and converted and disposed thereof to his own use, and other wrongs to the said plaintiff then and there did, against the peace of our lord the now king, and to the damage of the said plaintiff of fifty pounds; and therefore he brings his suit, &c.

Declaration in trespass for breaking the close, and taking plaintiff's mare out of the same, and converting her to his own use.

T. BARROW.

In the plaintiff's instructions it is wished that a count in trover might be added to this declaration; but because that trespass and trover cannot consistently with the rules of pleading be join-

ed in one action, I am of opinion that it is better to declare in trespass under the circumstances of this case.

T. BARROW.

Declaration for entering closes, with force and arms broke and entered certain closes of him the said plaintiff, to wit, four yards, situate, lying, and being, &c. belonging and adjoining to four several houses of him: the said plaintiff there also situate and being, and contiguous and adjoining to each other, and then and there with spades, pickaxes, and other iron instruments dug up, tore up, subverted, and spoiled the soil of the said plaintiff in and of the said closes, and then and there put up, placed, and erected in and upon the said closes of the said plaintiff respectively a certain large quantity of scaffolding, and kept and continued the same so there put up, placed, and erected for a long time, to wit, for the space of three months then next following, and then and there also placed, refted, and nailed certain bearing and other timbers of and belonging to the said scaffolding to the stair heads, and to certain windows and other parts of the said several houses of him the said plaintiff respectively, and thereby and therewith, during all that time, greatly injured, damaged, and spoiled the said several closes of him the said plaintiff, and also damaged, daubed, and spoiled the paint, frames, and wood-work of the said windows, and also then and there broke to pieces, damaged, and injured the glafs of and belonging to the said windows of a large value, to wit, of the value of ten pounds; and also then and there built upon and erected, set up, and caused to be built upon, erected, and set up, a great part of a certain erection or building upon a certain wall of the said plaintiff there situate, standing, and being near to the said messuages or dwelling-houses of the said plaintiff, and certain windows thereof, and kept and continued, and caused to be kept and continued the said part of the said erection or building so built, erected, and set up on the said wall of the said plaintiff as aforesaid, for a long time, to wit, from thence hitherto, and thereby greatly damaged, injured, and weakened the said wall, and by means of such erection or building thereon, and of other the premises aforesaid, divers, to wit, twenty of the lights and windows of the said several houses of the said plaintiff were greatly darkened and obstructed, and the said plaintiff was incommoded and disturbed in the occupation and possession of his said houses, yards, and premises, and was obliged to lay out and expend a large sum of money, to wit, the sum of fifty pounds in and about the repairing and making good the said damage so done to the same as aforesaid, and one A. B. who would otherwise have become a tenant to the said plaintiff of one of his said houses, on occasion and by reason of the said several premises aforesaid refused and declined to become such tenant of the said house, or to enter into or take possession of the same, and the said plaintiff was for a long time, to wit, for and during all the time last aforesaid, unable to procure and obtain a tenant either for that or any or either of the said other houses of him the said plaintiff, and in consequence thereof lost and was deprived of all rent and other benefit and advantage that would otherwise have arisen and accrued to him from the letting of the said houses, to wit,

wit, at, &c. : And also for that he the said defendant with force and arms, &c. on, &c. at, &c. broke and entered divers, to wit, four other closes of the said plaintiff there situate, lying, and being, and each and every of them being called the yard, and then and there dug up, turned up, and subverted, damaged, and spoiled a large quantity of the soil in and of the said last-mentioned closes of a large value, to wit, of the value of forty pounds, and then and there put up, set up, placed, and erected in and upon the said several closes near to certain other messuages or dwelling-houses of the said plaintiff, situate in the parish and county aforesaid, contiguous and adjoining to each other, and to certain windows of those houses, a certain other large quantity of scaffolding, and also then and there put, placed, nailed, and fastened to the said last-mentioned windows, and to the frames thereof, and to certain other parts of the said last-mentioned houses of the said plaintiff, certain bearings, and other timbers, and other parts of the said last-mentioned scaffolding, and kept and continued the said scaffolding, and the said bearing, and other timbers, and other parts thereof, so there put up, placed, fixed, and fastened as last aforesaid, for a long space of time, to wit, for the space of three months, and thereby not only greatly darkened the said windows of the said last-mentioned houses of the said plaintiff, and prevented the light and air from coming and entering into and by the same, but greatly weakened and injured the said houses of the said plaintiff in the walls, windows, and window frames, and in other parts and particulars thereof, to wit, at, &c. : And also for that he the said defendant heretofore, to wit, on, &c. at, &c. built upon, erected, and set up, and caused to be built, &c. upon a certain part of a certain other wall of the said plaintiff there situate, standing, and being near to certain other messuages or dwelling-houses of the said plaintiff, and certain other windows thereof of a certain part of a certain other erection and building, and kept and continued, and caused to be kept and continued the said part of the said last-mentioned erection or building so erected, built, and set up on part of the said last-mentioned wall of the said plaintiff for a long time, to wit, from thence hitherto, and thereby greatly damaged, injured, and weakened the said part of the said last-mentioned wall, and during all the time last aforesaid hath greatly darkened and obstructed the said lights and windows of the said last-mentioned messuages or dwelling-houses of the said plaintiff, and incommoded and disturbed him in the possession and occupation of such houses and premises : And also for that the said defendant, to wit, on, &c. with force and arms, &c. broke, damaged, injured, and destroyed certain goods and chattels of the said plaintiff, to wit, twenty window frames, twenty sashes, and one hundred squares of glass there then found and being of a large value, to wit, of the value of fifty pounds of lawful money of Great Britain, and then and there did other wrongs to the said plaintiff, against the peace of our lord the now king, and to the damage of the said plaintiff.

2d Count, for entering closes, digging in soil, erecting upon said closes near to plaintiff's house and windows a scaffolding, and thereby darkening the same and hindering light and air from coming into the windows.

3d Count, for erecting on part of plaintiff's wall near to the said houses and windows, a part of another erection, and thereby damaging wall and obstructing light.

4th Count, for breaking goods.

TRESPASS to REAL PROPERTY—

plaintiff of five hundred pounds; and therefore he brings his suit,
&c. V. LAWES.

Declaration in **DORSETSHIRE**, to wit. Arthur Cozens, of, &c. Robert C. B. for cutting White, of, &c. and John Wiltshire, of, &c. were attached to down and carrying away trees, answer Erasmus Cox in a plea; wherefore with force and arms thereby destroying the hedges, they broke and entered the closes of the said Erasmus, situate, lying, &c. so that the land of the plaintiff was damaged by cattle which escaped out of a close adjoining

and being in the parish of Hillfield, in the said county of Dorset, and with their feet in walking trod down, trampled upon, consumed, damaged, spoiled, and destroyed the grass and corn of the said Erasmus there also growing and being of the value of five pounds, and with the wheels of carts, waggons, and other carriages tore up, turned up, cut up, subverted, and spoiled the soil of the said close of the said Erasmus, and with hatchets, axes, mattocks, and other iron instruments cut down, felled down, grubbed up, stubbed up, prostrated, and destroyed the timber trees and other trees of the said Erasmus growing and being in the said close, and in the hedges and fences of the said closes, and there put, laid, and placed the said timber trees and other trees so felled, grubbed, and stubbed as aforesaid in and upon the said closes, and the hedges and fences of the same closes, and thereby very much incumbered the said closes, hedges, and fences, and damaged, squeezed, crushed, spoiled, and destroyed the hedges, fences, and other the grass and corn growing in and upon the said closes, and molested, disturbed, and hindered the said Erasmus in the enjoyment of his said closes, and the said timber trees and other trees, with the materials thereof coming and being of the value of five hundred pounds of lawful money of Great Britain, there seized, took, dragged, hauled, carted, and carried in, across, and over the said closes, and thereby very much damaged, injured, and spoiled other the grass and corn of the said Erasmus then growing in his said closes, and the same timber trees and other trees, and materials thereof coming as aforesaid, carried away, and converted, and disposed thereof to their own use; and by reason of the premises, and of the said timber trees and other trees having been so felled, grubbed, stubbed, and carried off and from the said hedges and fences as aforesaid, and of the said hedges and fences being so damaged, injured, and spoiled thereby as aforesaid, divers cattle of divers persons escaped from and out of the closes, fields, and commons adjoining the said closes of the said Erasmus into the said closes of the said Erasmus, and there trod down, depastured, eat up, spoiled, and destroyed other the grass and corn of the said Erasmus of the value of five pounds, to wit, at the parish of Hillfield aforesaid, in the said county: And also wherefore the said Arthur, Robert, and John with force and arms, at the parish of Hillfield aforesaid, in the county of Dorset aforesaid, seized and took other the goods and chattels of the said Erasmus of the value of other five hundred pounds of like lawful money there

there also found and being, and carried away the same, and converted and disposed thereof to their own use, and other wrongs and injuries to the said Erasmus there did to the great damage of the said Erasmus, and against the peace of our lord the now king; and whereupon the said Erasmus, by P. W. his attorney, complains, for that the said Arthur, Robert, and John, on the first of March 1785, and on divers other days and times between that day and the day of suing forth the original writ of the said Erasmus, with force and arms broke and entered the closes of the said Erasmus, to wit, ten closes *, situate, lying, and being in the parish of Hillfield, in the said county of Dorset, and with their feet in walking trod down, trampled upon, consumed, damaged, spoiled, and destroyed the grass and corn, to wit, wheat, rye, oats, pease, and beans of the said Erasmus of another great value, to wit, of the value of other five pounds of like lawful money there then also growing and being, and with the wheels of carts, waggons, and other carriages tore up, turned up, cut up, subverted, and spoiled the soil, to wit, one hundred perches of the soil of the said closes of the said Erasmus, and then and there with hatchets, axes, mattocks, and other iron instruments cut down, felled down, grubbed up, stubbed up, prostrated, and destroyed the timber trees and other trees, to wit, one hundred oak trees, one hundred ash trees, one hundred elm trees, one hundred oak pollard trees, one hundred ash pollard trees, one hundred elm pollard trees, and one hundred other trees of the said Erasmus then growing and being in the said closes, and in the hedges and fences of the same closes of the said Erasmus, and then and there put and placed the said timber trees and other trees so felled, grubbed, and stubbed as aforesaid in and upon the said closes, and the hedges and fences of the same closes, and thereby very much incumbered the said closes, hedges, and fences, and then and there greatly damaged, crushed, squeezed, and spoiled the grass and corn growing in and upon the said closes, and destroyed the said hedges and fences, and the grass and corn growing in and upon the said closes, and molested, disturbed, and hindered the said Erasmus in the enjoyment of his said closes, the said timber trees and other trees, with the materials thereof coming and being, to wit, fifty cart loads of timber trees, fifty cart loads of other trees, fifty cart loads of branches, fifty cart loads of boughs, and fifty cart loads of chips of the value of five hundred pounds of like lawful money, then and there seized, took, dragged, hauled, carted, and carried in, across, and over the said closes, and thereby very much damaged, injured, and spoiled other the grass and corn of the said Erasmus there and then growing in the said closes, and the same timber trees, other trees, and materials thereof coming as aforesaid, carried away, and converted, and disposed

* It would have been proper to have stated the names of the closes, though it is not necessary to do it. If the defend-

ant plead *liberum tenementum*, plaintiff must make a new assignment.

thereof to their own use; and by reason of the premises, and of the said timber trees and other trees being so felled, grubbed, and stubbed of and upon the said hedges and fences as aforesaid, and of the said hedges and fences being so damaged, injured, and spoiled thereby as aforesaid, divers cattle of divers persons escaped from and out of the closes, fields, and commons adjoining the said closes of the said Erasmus, unto and into the said closes of the said Erasmus, and then and there trod down, depastured, eat up, spoiled, and destroyed other the grafs and corn of the said Erasmus of the value of other five pounds, to wit, at the parish of Hillfield aforesaid, in the said county: And also for that the said Arthur, Robert, and John afterwards, to wit, on, &c. with force and arms, at the parish of Hillfield aforesaid, in the said county of Dorset, seized and took other the goods and chattels, that is to say, one hundred other oak trees, one hundred other ash trees, one hundred other elm trees, one hundred other oak pollard trees, one hundred other ash pollard trees, one hundred other elm pollard trees, one hundred other trees, fifty cart loads of other timber trees, fifty cart loads of other trees, fifty cart loads of other branches, and fifty cart loads of other boughs of the said Erasmus of another great value, to wit, of the value of other five hundred pounds of like lawful money there then also found and being, and carried away the same, and converted and disposed thereof to their own use, and other wrongs to the said Erasmus then and there did to the great damage of the said Erasmus, and against the peace of our said lord the now king; wherefore the said Erasmus lays that he is injured, and hath sustained damage to the value of five hundred pounds; and therefore he brings suit, &c.

Drawn by MR. CROMPTON.

The plaintiff is tenant at will to the tenant for life, and the reversioner having entered cut down pollards and sticks. This action was brought for the

trees, also against the reversioner, the carpenter who bought the trees, and his servants.

Plea, 1st, General issue.

And the said Arthur, Robert, and John, by W. B. their attorney, come and defend the wrong and injury, when, &c. and say, that they are not guilty of the premises above laid to their charge in manner and form as the said Erasmus hath above complained against them; and of this they put themselves upon the country,

2d, That defendants as servants, and by command of the persons entitled to reversion of *locus in quo*, who had a power to cut down timber, entered *locus in quo* with horses and carts, for the purpose

&c.: And for further plea in this behalf, by leave of the court, &c. as to the breaking and entering the said closes of the said Erasmus in the said declaration mentioned, and with their feet in walking treading down, trampling upon, damaging, spoiling, and destroying the grafs and corn there growing, and with horses, mares, and geldings in the said declaration mentioned eating up, depasturing, treading down, trampling upon, consuming, spoiling, and destroying other the grafs and corn there then also growing and being, and with the wheels of waggons, carts, and other carriages tearing up, cutting up, subverting, and spoiling the soil of the said closes, and in so doing, &c.

and

LIBERUM TENEMENTUM.

and putting, laying, and placing the trees in the said declaration mentioned in and upon the said closes and the hedges and fences thereof, and thereby incumbering the same, and damaging, crushing, squeezing, and spoiling the grass and corn in the said closes, and destroying the said hedges and fences, and other the grass and corn there then growing in and upon the said closes, and molesting, disturbing, and hindering the said Erasmus in the enjoyment of the said closes, and the said trees, and the materials thereof coming, taking, dragging, hauling, carting, and carrying in, across, and over the said closes, and thereby damaging, injuring, and spoiling other the grass and corn of the said Erasmus in the said closes in the first Count of the said declaration mentioned, the said defendants say (*actio non*) ; because they say, that long before the said several time when, &c. to wit, on the twelfth of November 1744, one George Trenchard, esquire, was seised in his demesne as of fee of and in the said closes in which, &c. and being so seised he the said George afterwards, that is to say, on the same day and year last aforesaid, at the parish aforesaid, in the said county, by a certain indenture then made between the said George of the one part, and one Samuel Watts of Clitnole, in the said county, of the other part, one part of which said indenture, sealed with the seal of the said Samuel, the said defendants bring here into court, the date whereof is the day and year aforesaid, did demise, grant, and to farm let the said closes in which, &c. except and always reserving out of that demise unto the said George Trenchard, his heirs and assigns, all timber trees, and trees likely to prove timber, then standing, growing, or being, or which or might at any time thereafter stand, grow, or be in and upon the said demised premises, or any part thereof, with free liberty of ingress, egress, and regress to and for the said George, his heirs and assigns, and his and their horses, workmen, servants, carts, and carriages at all seasonable times in the year, for cutting, digging, and carrying away the same at his and their free will and pleasure, to have and to hold the said closes, except as in and by the said lease is excepted, unto the said Samuel, his executors, administrators, and assigns, from the day next before the day of the date of the said demise for and during, and unto the full end and term of ninety-nine years thence next ensuing, if Grace the wife of the said Samuel, and Samuel Watts and Michael Watts their sons should so long live, as by the said indenture, relation being thereunto had, will more fully appear : And the said defendants further say, that the said Samuel, by virtue of the said indenture, afterwards, to wit, on the day and year last aforesaid, entered into and became possessed of the said closes, except as above excepted, for and during the term therein specified, and that the said demise is still in force and undetermined, to wit, at the parish aforesaid, in the county aforesaid, the said George being seised of the reversion of and in the said demised premises, amongst other things, in his demesne as of fee : And ed of the reversion dependent on the term, conveys, by indenture of lease and release, the same to W. T. in trust for A. C. father of one of the defendants.

G. T. seised in fee of locus in quo.

G. T. demised to S. W. lessor of the plaintiff, for 99 years.

G. T. reserves to himself, his heirs and assigns, all timber trees, &c.

G. T. being seised

TRESPASS.—PLEA—

the said defendants further say, that the said George being so seised thereof afterwards, and before the said time when, &c. in the said declaration mentioned, to wit, on the twelfth of February 1754, at the parish aforesaid, in the county aforesaid, by a certain indenture of bargain and sale then and there made between the said George Trenchard of the one part, and one William Taunton, since deceased, of the second part, and one Arthur Cozens, father of the said Arthur the now defendant, of the third part (one part of which said indenture of bargain and sale, sealed with the seal of the said George, the said defendants now bring here into court, the date whereof is the same day and year in that behalf as aforesaid), for the consideration therein mentioned (amongst other things) bargained and sold the reversion of the said closes in which, &c. together with all timber trees and pollards, and all other trees belonging and growing upon the said closes in which, &c. to the said William, to have and to hold the same (amongst other things) to the said William Taunton, since deceased, from the day next before the date of the said indenture of bargain and sale for one whole year from thence next ensuing and fully to be complete and ended, as by the said indenture of bargain and sale more fully appears; by virtue of which said bargain and sale, and by the force of the statutes for transferring uses in possession, the said William Taunton, since deceased, became and was possessed of the said reversion of and in the said closes in which, &c. (amongst other things) accordingly, and the said William Taunton, since deceased, being so possessed thereof afterwards, and before the committing of the trespasses in the said declaration above supposed, by a certain indenture tripartite made on the thirteenth of February 1745, at the parish aforesaid, in the county aforesaid, between the said George of the first part, the said Arthur, since deceased, and father of the said Arthur the now defendant, of the second part, and the said William Taunton, since deceased, of the third part (one part of which said last-mentioned indenture, sealed with the seal of the said George, the said Arthur the defendant, Robert, and John, now bring here into court, the date whereof is the same day and year in that behalf aforesaid), the said George, for the consideration therein more particularly mentioned, did bargain, sell, alien, release, and confirm unto the said William (amongst other things) the said reversion of the said closes in which, &c. together with the timber trees and pollards, and all other trees belonging and growing upon the said closes in which, &c. with the appurtenances, to have and to hold the same, with the appurtenances, to the said William, his heirs and assigns for ever in trust nevertheless for the said Arthur Cozens the father, his heirs and assigns for ever, as by the said last-mentioned indenture (amongst other things) now fully appears; by means of which said premises the said William Taunton, since deceased, became and was seised of and in the said reversion of the said closes in which, &c. together with all the timber trees, pollards, and all other trees belonging and growing upon the said closes in which,

&c.

Expendum.

In Trust.

LIBERUM TENEMENTUM.

&c. with the appurtenances (amongst other things) In his de-
 meſne as of fee; and being ſo ſeiſed thereof he the ſaid William
 Taunton, ſince deceaſed, afterwards, and before the committing
 the treſpaſſes in the ſaid declaration above ſuppoſed, to wit, on the
 firſt day of January 1760, at the pariſh aforeſaid, in the county
 aforeſaid, died, whereby the ſaid reversion of the ſaid cloſes in
 which, &c. together with all the timber trees, and pollards, and
 other trees, belonging and growing upon the ſaid cloſes in which,
 &c. with the appurtenances (amongſt other things) deſcended
 and came to one other William Taunton, deceaſed as aforeſaid:
 And the ſaid defendants further ſay, that the ſaid defendants as
 ſervants of the ſaid laſt-mentioned William Taunton, and by his
 command, at the ſaid ſeveral times when, &c. the ſame being
 ſeaſonable times of the year for the purpoſe, with the ſaid horſes,
 mares, and geldings, and with the ſaid waggons, carts, and car-
 riages in the ſaid declaration mentioned, the ſame being neceſſary
 horſes, mares, geldings, waggons, carts, and carriages, for the
 purpoſe of cutting, digging, and carrying away the ſaid trees in
 the ſaid declaration mentioned, as being the trees of the ſaid Wil-
 liam, the ſame being timber trees, and trees likely to prove tim-
 ber, ſtanding, growing, and being in and upon the ſaid cloſes,
 broke and entered the ſaid cloſes, and with their feet in walking,
 and with the ſaid cattle neceſſarily and unavoidably trod down,
 trampled upon, and deſtroyed a little of the graſs and corn there then
 growing and being, and the ſaid cattle did by ſnatches and bites,
 againſt the will and conſent of the ſaid defendants, eat and depaſ-
 ture a little of the graſs and corn of the ſaid Erasmus in the ſaid
 cloſes, and the wheels of the ſaid carts, waggons, and other car-
 riages did neceſſarily and unavoidably a little tear up, turn up, cut
 up, ſubvert, and ſpoil the ſoil of the ſaid cloſes, and the ſaid de-
 fendants did then and there cut down, felt down, grub up, ſtub
 up, proſtrate, and deſtroy the trees in the ſaid declaration men-
 tioned growing in and upon the ſaid cloſes, and in the hedges and
 fences thereof, the ſame being timber trees, and trees likely to
 become timber, as being the trees of the ſaid William Taunton
 the ſon, and by his command, and the ſaid trees ſo felled down,
 cut down, grubbed up, ſtubbed up, and proſtrated, did neceſſarily
 and unavoidably put, lay, and place in and upon the ſaid cloſes,
 and the ſaid trees did neceſſarily and unavoidably fall upon the
 hedges and fences at the time they were cut down as aforeſaid, and
 were thereby neceſſarily and unavoidably placed and put in and
 upon the ſame, and the ſaid defendants did thereby a little incum-
 ber the ſaid cloſes, and damage, cruſh, ſqueeze, and ſpoil the
 graſs and corn in the ſaid cloſes, and a little deſtroy the hedges
 and fences, and other the graſs and corn there, and a little moleſt
 and diſturb the ſaid Erasmus in the enjoyment of the ſaid cloſes,
 and in order to remove and carry the trees, and the materials
 thereof coming from and out of the ſaid cloſes, they the ſaid de-
 fendants neceſſarily and unavoidably hauled, carted, and carried
 the ſame in, acroſs, and over the ſaid cloſes, and thereby a little
 damaged,

*Per quod, the re-
 version deſcend-
 ed to one other
 William Taun-
 ton, as ſon and
 heir of the ſaid
 William Taun-
 ton, deceaſed.
 And defendants
 as ſervants of the
 ſaid laſt men-
 tioned William
 Taunton, and
 by his command
 entered locus in
 quo with ſaid
 horſes, &c. for
 the purpoſe of
 cutting down
 trees, &c. and
 by ſo doing, &c.
 did neceſſarily a
 little treſpaſs, &c.*

TRESPASS TO LANDS, &c.—(MINES.)

damaged, injured, and spoiled other the grafs and corn of the said Erasmus, in the first Count of the said declaration mentioned, doing as little damage on that occasion as they possibly could, and as it was lawful for them to do for the cause aforesaid, and which are the several trespasses in the introduction to the said plea mentioned, and this, &c.; wherefore, &c.

S. LAWRENCE

Declaration for
digging mines,
raising up ore
in the close of
plaintiff, and
converting same
to the defend-
ant's own use.

BRENT, ESQUIRE,
against

BEARD AND OTHERS.

SOMERSETSHIRE, to wit.
William Beard, late of Barnwell,
&c. John Battle, late of, &c. and
John Wookey, late of, &c. were attached to answer Charles
Copy Brent, esquire, in a plea; wherefore with force and arms
they broke and entered the close of the said C. C. situate and
being in the manor and parish of Hutton, in the said county,
and with their feet in walking trod down, trampled upon, con-
sumed, and spoiled the grafs and corn of the said C. C. there
growing and being, and with spades, shovels, and pickaxes, and
other iron instruments, dug up, turned up, and subverted the
earth and soil of the said C. C. and dug, made, and sunk divers
mines, pits, shafts, and holes in the said close of the said C. C.
there and from and out of the said mines, pits, shafts, and holes
so dug, made, and sunk, raised, dug, and got divers large quan-
tities of earth, soil, stones, lead ore, copper ore, lapis calami-
naris, brass ore, and other ore of the said C. C. of great value,
and the same so raised, dug, and got from and out of the said
mines, pits, shafts, and holes, seized and carried away, and con-
verted and disposed thereof to their own use: And also wherefore
the said W. Beard, J. Battle, and J. Wookey, with force and
arms, in the parish of Hutton aforesaid, seized, took, and car-
ried away, divers other large quantities of earth, soil, stones,
lead ore, copper ore, lapis calaminaris, brass, and other ore of
the said C. C. of other great value there found and being, and con-
verted and disposed of the same to their own use, and other wrongs
to the said C. C. there did to the great damage of the said C. C.
and against the peace of our sovereign lord the now king; and
whereupon the said C. C. by E. Sheppard his attorney, complains,
for that the said W. B. J. B. and J. W. on the first day of Janu-
ary, in the year of Our Lord 1785, and on divers other days and
times, between that day and the day of suing out the original
writ of the said C. C. with force and arms, broke and entered the
close of the said Charles Copy, that is to say, a certain close,
called Hutton Hill, situate and being in the said manor and parish
of Hutton aforesaid, in the said county, and with their feet in
walking trod down, trampled upon, spoiled, and consumed the
grafs and the corn of the said C. C. there then growing and
being of the value of ten pounds, and with shovels, pickaxes,
and other iron instruments, dug up, turned up, and subverted
the earth and soil, that is to say, two acres of the earth and soil
of the said close of the said C. C. and then and there dug, made,
and

and sunk, divers mines, pits, shafts, and holes, that is to say, ten mines, ten shafts, ten holes of great breadth and depth, that is to say, each of the breadth of one hundred feet, and of the depth of five hundred feet in the said close of the said C. C. there, and from and out of the said mines, pits, shafts, and holes to dug, made, and sunk as afore said, then and there raised, dug, and got divers large quantities of earth, soil, stone, lead ore, copper ore, lapis calaminaris, brass ore, and other ore of the said C. C. that is to say, one hundred cart loads of earth, one hundred cart loads of soil, one hundred cart loads of stones, one hundred cart loads of lead ore, one hundred cart loads of copper ore, one hundred cart loads of lapis calaminaris, one hundred cart loads of brass ore, and one hundred cart loads of other ore of the said C. C. there then being of great value, to wit, the value of two thousand pounds, and the same so raised, dug, and got from, and out of the said mines, pits, shafts, and holes, they the said W. B. then and there seized, took, and carried away, and converted and disposed thereof to their own use; and also for that the said W. B. J. B. and J. W. afterwards, to wit, on the said first day of January 1785, and on divers other days and times between that day and the time of suing out the original writ of the said C. C. with force and arms, at the parish of Hutton afore said, in the said county, seized, took, and carried away divers other large quantities of earth, soil, stones, lead ore, copper ore, lapis calaminaris, brass ore, and other ore of the said C. C. that is to say, one hundred other cart loads of earth, one hundred other cart loads of soil, one hundred other cart loads of stones, one hundred other cart loads of lead ore, one hundred other cart loads of copper ore, &c. of the said C. C. there then found and being of other great value, to wit, of the value of other two thousand pounds, and converted and disposed of the same to their own use and other wrongs to the said C. C. they the said W. B. J. B. and J. W. then and there did to the great damage of the said C. C. and against the peace of our said sovereign lord the now king, whereupon the said C. C. saith that he is injured, and hath sustained damage to the value of two thousand pounds; and therefore he brings suit, &c.

Drawn by Mr. CROMPTON.

And the said W. B. J. B. and J. W. by G. South their attorney, come and defend the force and injury when, &c. and say, that they are not guilty of the said several trespasses above laid to their charge in manner and form as the said C. C. hath above thereof complained against them, and of this they put themselves upon the country, &c.: And for further plea in this behalf as to the breaking and entering the said closes, in the said first Count of the said declaration mentioned, in which, &c. and with their feet in walking treading down, trampling upon, consuming, and spoiling the grass and corn there growing and being, and with spades, shovels, pickaxes, and other iron instruments, digging up, turning up, and subverting the earth and soil of the said close, and

Plea, that the locus in quo was the freehold of A. B. wherefore the defendants as the tenants of A. B. dug mines, &c.

PLEA—LIBERUM TENEMENTUM—REPLICATION.

and digging, making, and sinking the said mines, pits, shafts, and holes in the said close there, and from and out of the said mines, pits, shafts, and holes so dug, made, and sunk afore-
 said raising, digging, and getting the said earth, soil, and stones, lead ore, copper ore, lapis calaminaris, brass ore, and other ore then being, and the same so raised, dug, and got from and out of the said mines, pits, shafts, and holes, seizing, taking, carrying away, and converting, and disposing thereof to their own use in the said declaration mentioned, above supposed to have been committed by the said defendants, they the said defendants by leave of the court here for this purpose first had and obtained, according to the form of the statute in that case made and provided, say, that the said C. (*actio non*); because they say, that the said close in which, &c. at the said several times when, &c. and before was, and yet is the close, soil, and freehold of David Powell and Ann his wife, and one John Capel; wherefore the said W. B. J. B. and J. W. as the tenants of the said D. and Ann his wife, and the said J. C. and by their command at the said several times when, &c. in the said first Count of the said declaration mentioned, entered into the said close in which, &c. as being the close, soil, and freehold of D. and A. his wife, and the said J. C. and with spades, shovels, pick axes, and other iron instruments, dug up, turned up, and subverted the earth and soil in the said closes in which, &c. in the said first Count, in the said declaration mentioned, as the earth and soil of them the said D. and A. his wife, and the said J. C. then being in their close, soil, and freehold, and dug, made, and sunk the said mines, pits, shafts, and holes in the said close in which, &c. in the said first Count of the said declaration mentioned, as in the close, soil, and freehold of them the said D. and A. his wife, and the said J. C. and from and out of the said mines, pits, shafts, and holes so dug, made, and sunk in the said close in which, &c. as afore-
 said, raised, dug, and got the said earth, soil, stones, lead ore, copper ore, lapis calaminaris, brass ore, and other ore, in the said first Count of the said declaration mentioned, as the earth, soil, and freehold of the said D. and A. his wife, and the said J. C. dug and got from and out of the close, soil, and freehold, and the same seized, took, and carried away, and converted and disposed thereof for the use of the said D. and A. his wife, and the said J. C. as they lawfully might for the cause afore-
 said, and this, &c.; wherefore, &c.

N. GROSE.

replication.

And the said C. C. as to the said plea of the said defendants by them first above pleaded in bar, whereof the said defendants have above put themselves upon the country; he the said C. C. doth so likewise: And the said C. C. as to the said plea of the said defendants by them lastly above pleaded in bar as to the said trespasses in the introduction to that plea mentioned by the said defendants above done, says, that he by reason of any thing in that plea mentioned (*precludi non*); because he says, that the said close

And the said C. C. as to the said plea of the said defendants by them first above pleaded in bar, whereof the said defendants have above put themselves upon the country; he the said C. C. doth so likewise: And the said C. C. as to the said plea of the said defendants by them lastly above pleaded in bar as to the said trespasses in the introduction to that plea mentioned by the said defendants above done, says, that he by reason of any thing in that plea mentioned (*precludi non*); because he says, that the said close

TRESPASS TO LANDS.

close in which, &c. at the said several times when, &c. and long before was and is the close, soil, and freehold of him the said C. C. and not the close, soil, and freehold of them the said D. P. and A. his wife, and the said J. C. or of any or either of them as the said defendants have above in that plea alledged, and this the said C. C. prays may be enquired of by the country, and the said defendants do so likewise; therefore, &c. G. ROOKE.

This cause was tried at Summer Assizes 1787, and verdict for defendants.

LANCASHIRE, to wit. J. C. complains of R. H. being, &c. for that he the said defendant heretofore, to wit, on, &c. at, &c. in, &c. with force and arms, &c. broke and entered the closes, to wit, one close called , one other close called , [describing them by their general name] of the said plaintiff there situate, lying, and being, and then and there with feet in walking, and by and with divers dogs, to wit, greyhounds, hounds, terriers, lurchers, beagles, harriers, pointers, and spaniels, and by and with servants and certain other idle and dissolute persons to the said plaintiff at present unknown then and there instigated by, and following and attending upon the said defendant, trod down, trampled upon, consumed, and spoiled the grafs there then growing and being of a large value, to wit, of the value of ten pounds of lawful money of Great Britain, and then and there broke down, tore down, prostrated, and destroyed the hedges and fences, to wit, fifty perches of the hedges, and fifty perches of the fences of and belonging to the said closes of the said plaintiff, and with the said dogs and servants and followers then and there without the licence and against the will of the said plaintiff, hunted and fowled upon the said several closes, and by and with the said dogs and hunting and fowling, tore up, broke down, and spoiled other the grafs, herbage, and fencing, to wit, ten roods of other fencing there then growing, standing, and being in the said closes: And also for that the said defendant (then and there being an inferior tradesman, to wit, a shoemaker) heretofore, to wit, on, &c. at, &c. in, &c. with force and arms, &c. and by and with dogs, to wit, greyhounds, &c. and by and with guns and other dogs, to wit, spaniels, setting dogs, and pointers, broke and entered other the closes, to wit, &c. &c. [as in first Count] of the said plaintiff there situate, lying, and being, and then and there hunted and fowled therein, without the leave or licence, and against the will of the said John: And also for that the said Richard heretofore, to wit, on, &c. and on divers other days and times, between that day and the exhibiting the bill of the said plaintiff at, &c. with force and arms, &c. by and with dogs, to wit, greyhounds, &c. broke and entered other the closes, to wit, &c. of the said plaintiff there situate, and on those several days and times, eat up, trod down, trampled upon, consumed, spoiled, and destroyed the grafs and the corn, grain, and roots, to wit, oats, &c.

Declaration
B. R. in trespass
vi et armis, for
hunting and
fowling on the
plaintiff's estate
after a written
notice to keep
off.

2d Count,
against defend-
ant as an infe-
rior tradesman,
2 Wils. Rep. 70.
1 Ld. Raymond,
4 Ed. 249.
Stat. 4 & 5 Wils.
Ma. c. 23. f. 10.
2 Esp. Nl. Pri.
121, &c.
3d Count, for
general trespass
on divers days
and times.

of

TRESPASS TO HOUSE

of the said plaintiff then being in the said several closes of a large value, to wit, of the value of other twenty pounds of like lawful money, and other wrongs to the said plaintiff then and there did against the peace of our lord the now king, and to the damage of the said plaintiff of fifty pounds; and therefore he brings his suit, &c.

T. BARROW.

Opinion to the above declaration.

2 Bla. Rep. 500.

Bla. Rep. 509.

From the tenor of a letter before me, it should seem that the defendant though a man of property is not qualified to kill game; if so and he follows a trade; it is most probable that he may be considered as an inferior tradesman within the intent and meaning of the Statute 4 and 5 William and Mary, c. 23. f. 30. and then upon a Count in the declaration against him as such he will be liable to full costs, though the plaintiff recovers less than forty shillings damages, with this advantage too, whether he has had notice not to come upon plaintiff's land or not, or whether the judge who tries the cause certifies the same to have been given and proved at the trial, both which must concur to entitle the plaintiff, if he recovers less than forty shillings damages, to his full costs under the

fourth section of 8. and 9. Wm. 3. c. 11. upon which plaintiff seems to have formed his idea of the present action. However, whether the defendant is or is not such inferior tradesman, a Count in the declaration to that effect can do no harm. I have therefore inserted it together with the other for trespass, after notice, and also a Count for a general trespass at divers days and times, which together seems to me to cover the whole of the plaintiff's cause of action. I am not aware that the not naming the closes would be fatal (indeed it could but amount to informality at most), but I think it prudent to preclude objection by given them each a name; but a name of general reputation will do.

THOMAS BARROW.

Declaration in trespass, breaking doors, putting furniture into disorder, disturbing lodgers, whereby they quitted.

(1) "and disturbed and quitted him"

(2) "thereof, and then and there did other wrongs to the said Richard against the peace of our lord the now king and to the damage of the said Robert of five pounds; and therefore he brings his suit, &c."

PALACE COURT, to wit. R. M. by C. H. his attorney, complains of G. H. in a plea of trespass, &c.; for that whereas he the said G. heretofore, to wit, on, &c. and also upon the twenty-first day of, &c. A. D. 1784 at, &c. in, &c. and within the jurisdiction of the said court, with force and arms, &c. broke and entered a certain messuage or dwelling house of the said R. there situate and being, and stayed and continued for a long space of time, to wit, for the space of six hours, and on each of those days and during that time made a great noise, disturbance, and affray in the said house (1), and wrenched, broke, and forced open, divers of the doors of and in the said messuage or dwelling house, and then and there broke, damaged, and spoiled the same, and the locks and fastenings thereof, and looked into, searched, and examined, divers of the rooms, apartments, and closets in and of the said house, and then and there tossed, tumbled, damaged, and spoiled the furniture, and other goods and chattels of the said Richard, then and there being in the said house; whereby the said Richard was not only greatly interrupted and disturbed in the peaceable and quiet possession, use, and occupation (2) of his said house, but divers persons, that is to say, one A. B. and C. D. who were at the time of the aforesaid trespasses, lodgers and tenants of the said Richard as to certain parts of his said house, left and quitted their lodgings, and ceased to be tenants to the said Richard of the same; whereby the said Richard lost all benefit and advantage that would have arisen and accrued on their continuing tenants to him

as

as aforesaid, at the parish and ward aforesaid, in the county aforesaid: And also for that he the said G. afterwards, to wit, on, &c. at, &c. in the county and jurisdiction aforesaid, with force and arms, &c. broke and entered a certain messuage, &c. &c. [Finish this Count like the first, only omitting the parts in Italic, and inserting in lieu thereof what is in the margin.] V. LAWES.

Easter Term, 29. Geo. III.

LINCOLNSHIRE, to wit. George Harrison complains of ^{(2) Trespasson} John Fowler; for that whereas by a certain statute made in a ^{H. 6. c. 4. f. 6.} parliament holden at Westminster, in the eighth year of the reign of Henry the Sixth, late king of England, entitled, "The Duty of Justices of Peace, where Land is entered upon or detained with force," it was (amongst other things) enacted, that if any persons should be put out or disseised of any lands or tenements in forcible manner, and put out peaceably after holding out with strong hand, the party grieved in that behalf should have affize of novel disseisin or a writ of trespass against such disseiser, and if the party grieved should by affize or by action of trespass, and it should be found by verdict or in other manner by due form in law that the party disseised entered with force into the lands and tenements, or then after his entry did hold with force, that the plaintiff should recover his treble damages against the defendant, as by the said statute more fully appears: And the said George further saith, that after the making the aforesaid statute, and before and at the time of the committing the grievance hereafter next mentioned, he the said George was seised in his demesne as of fee of and in one messuage, and divers, to wit, closes of lands, with the appurtenances, situate, lying, and being in the parish of Barralty le Beck, in the county of Lincoln, and being so seised thereof, the said John, not regarding the statute aforesaid, on the twenty-sixth of February A. D. 1789, at, &c. aforesaid, with force and arms, &c. entered into the said premises, and then and there in a forcible manner put out and disseised the said George therefrom, and kept and continued him the said John so put out and disseised for a long space of time, to wit, for the space of twenty days then next following, whereby the said George, for and during all that time, lost and was deprived of all the profits, benefit, and advantage which might and would otherwise have arisen and accrued to him from the said premises, and was put to great trouble, inconvenience, and expence for, in, and about the regaining the possession thereof, in contempt of our said lord the king, to the great damage of the said George, and against the form of the statute aforesaid, to wit, at, &c. aforesaid: And the said G. further says, that after the making of the aforesaid ^{2d Count} statute, and before and at the time of the committing the grievance hereinafter next mentioned, he the said George was seised in his demesne as of fee of and in one other messuage, and divers, to wit, other closes of land, with the appurtenances, situate, lying, and being in the parish aforesaid, in the county aforesaid.

said, and from which said last-mentioned premises he the said John, on the said twenty-sixth of February in the year aforesaid, peaceably put out the said George, to wit, at, &c. aforesaid; nevertheless the said John, not regarding the statute aforesaid on the day and year last aforesaid, and from thence for a long space of time to wit, for the space of twenty days then next following, with force and arms, and with strong hand held out the said George from the said last-mentioned premises, in contempt of our said lord the king, to the great damage of the said George, and against the form of the statute as aforesaid, to wit, at, &c. aforesaid. [The 3d Count was a common one in trespass, for entering the plaintiff's house and lands, with an expulsion; and the 4th, for seizing, taking away, and converting plaintiff's goods.]

Pleas before the barons of the exchequer at Westminster, among the pleas of the term of St. Hilary, in the thirtieth year of the reign of our sovereign lord George the Third, by the grace of God, of Great Britain, France, and Ireland, king, defender of the faith, &c.

entering
plaintiff's close
by his bail and
servants, and
treading down
grass and corn,
&c. and by cat-
tle, breaking and
depositing and
by carriages full
setting soil,
breaking down
gates, breaking
up pieces of lock,
&c. destroying
hedges, &c.
overturning
stacks of hay,
and scattering
away

WILTSHIRE. Be it remembered, that heretofore, that is to say, in Michaelmas term last past, John Lowther, a debtor of his present majesty, came before the barons of this exchequer at Westminster, by Abel Jenkins his attorney, and brought then here into court his bill against James Gordon in a plea of trespass, the tenor of which said bill follows in these words, Wiltshire, to wit: John Lowther, a debtor of our lord the king, comes before the barons of the exchequer on the twenty-eighth of November in this same term, by A. Jenkins his attorney, and complains by bill against James Gordon present here in court the same day of a plea of trespass; for that the said James, on the first of July, A. D. 1789, and on divers other days and times between that day and the day of exhibiting the bill of the said John in this behalf, with force and arms, &c. broke and entered the close of the said John called Hither Ludburn, situate, lying, and being in the parish of Westbury, in the said county of W. and with his feet and the feet of his servants in walking trod down, trampled upon, consumed, and spoiled the grass and corn, to wit, wheat, rye, barley, pease, beans, and oats of the said John of the value of ten pounds at those times there standing, growing, and being, and with certain cattle, to wit, horses, mares, geldings, and colts, eat up, depastured, trod down, trampled upon, consumed, and spoiled other the grass and corn, to wit, other wheat, rye, barley, pease, and beans of the said John of the value of other ten pounds at those times then also standing, growing, and being, and with the wheels of carts, waggons, and other carriages, tore up, turned up, and subverted the soil, to wit, one hundred perches of the soil of the said John of his aforesaid close of the value of other ten pounds, and broke down, threw down, pulled down, prostrated, broke open, damaged,

damaged, spoiled, and destroyed the gates, to wit, four gates of the said John of the value of other ten pounds at those times erected, set up, standing, and being in and upon his aforesaid close, and broke to pieces, forced open, broke open, wrenched open, demolished, and spoiled the locks, staples, and hinges, to wit, eight locks, eight staples, and twenty hinges of the said John of the value of five pounds, at those times affixed to the said gates, and with which the said gates were at those times locked and fastened, and broke down, threw down, prostrated, pulled up, pulled to pieces, demolished, and destroyed the hedges, fences, posts, and rails, to wit, twenty perches of the hedges, twenty perches of the fences, fifty posts, and fifty rails of the said John of the value of ten pounds, at those times erected, set up, standing, growing, and being in and upon his said close, and pulled down, threw down, overset, and overturned the stacks and ricks of hay, to wit, three stacks of hay and two ricks of hay of the said John of the value of fifty pounds, at those times standing and being in and upon the aforesaid close of the said John, and scattered the said hay in and about the said close of the said John, and with the aforesaid cattle of the said James, and the wheels of his aforesaid carts, waggons, and other carriages trod down, trampled upon, crushed, consumed, and wholly spoiled the said hay; by means whereof the same was rendered of no use or value whatever to the said John, to wit, at the parish aforesaid, and other wrongs to the said John there did to his great damage, and against the peace of our lord the now king, whereupon the said John says he is injured, and hath sustained damage to the value of three hundred pounds. whereby he is the less able to satisfy by his said majesty the debt to which he owes him at his said exchequer; and therefore he brings suit, &c. Pledges, &c.

And now here at this day, that is to say, in eight days of St. Hilary in this same term, until which day the said James had leave to imparl to the said bill, and then to answer the same, come as well the said John by his attorney, as the said James by Roger Jortin his attorney, and the said John prays that the said James may answer him in the premises, and upon this the said James defends the force and injury when, &c. and says that he is not guilty of the several trespasses above laid to his charge, in manner and form as the said John hath above thereof complained against him; and of this he puts himself upon the country, &c.; and the said John doth the like: And for a further plea as to the breaking and entering the said close in which, &c. and with his feet and the feet of his servants in walking treading down, trampling upon, consuming, and spoiling the grass and corn in the said declaration in that respect mentioned, and with cattle eating up, depasturing, treading down, trampling upon, consuming, and spoiling other the grass and corn in the said declaration in that respect mentioned, and with the wheels of carts, waggons, and other carriages tearing up, turning up, and subverting the soil of the said John of his aforesaid

Plea 1st, not guilty, 2d, plea of justification in right of a private way by necessity, that one W. M. was seised of two closes, and aliened one to defendant, & that defendant of necessity passed through plaintiff's close to his own.

close, and breaking down, throwing down, pulling down, prostrating, breaking open, breaking to pieces, damaging, spoiling, and destroying the gates in the said declaration mentioned, and breaking to pieces, forcing open, wrenching open, demolishing, and spoiling the locks, staples, and hinges with which the said gates were locked and fastened, and breaking down, throwing down, prostrating, pulling up, pulling to pieces, demolishing, and destroying the hedges, fences, posts, and rails, and pulling down, throwing down, oversetting, and overturning the stacks and ricks of hay in the said declaration also mentioned, and scattering the said hay in and about the said close, and with the said cattle of the said James, and the wheels of his aforesaid carts, waggons, and other carriages treading down, trampling upon, crushing, consuming, and spoiling the said hay above supposed to have been committed by the said James, he the said James by leave of the court here for this purpose first had and obtained, according to the form of the statute in that case made and provided, says, that the said John ought not to have his aforesaid action thereof maintained against him; because he says, that the said close in the said declaration mentioned and in which, &c. is contiguous and adjoining towards the south side thereof to a certain ancient and public highway in the said parish, and towards the north side thereof to a certain other close in the said parish called the New Tynning, and that one William Mackey, for divers years before the making of the alienation and conveyance to the said John hereinafter mentioned, was lawfully seised in his demesne as of fee as well of the said close in which, &c. as of the said other close called the New Tynning, with their respective appurtenances; and being so seised of the said close respectively, the said William Mackey heretofore, to wit, on the thirty-first day of December, in the year of Our Lord 1786, at the parish aforesaid, duly granted, aliened, and conveyed the said close in which, &c. with the appurtenances, to the said John, his heirs and assigns: And the said James further says, that during all the time aforesaid, and at the time of such alienation and conveyance of the said close in which, &c. to the said John, the said William Mackey, his farmers and tenants, occupiers of the said close called the New Tynning, had no other way for themselves and their servants to go, return, pass, and repass on foot, and with carts, waggons, and other carriages, and the cattle drawing the same to and from the said last-mentioned close, save and except a certain way from and out of the aforesaid highway, through, over, and along the said close in which, &c. and into the said close called the New Tynning, and from thence back again, through, over, and along the said close in which, &c. unto and into the said highway, for which reason the said William M. for himself, his farmers and tenants, occupiers of the said close called the New Tynning, after such alienation and conveyance of the said close in which, &c. to the said John, necessarily ought to have had for themselves and their servants such way as aforesaid, being the nearest and most

convenient

convenient way the said close so aliened and conveyed to the said John as aforesaid, to go, return, pass, and repass in manner aforesaid on foot, and with carts, waggons, and other carriages, and the cattle drawing the same every year at all times of the year at his and their free will and pleasure, for the necessary use and occupation of the said close called the New Tynning, and thereof accordingly had and used the said way until and at the time of the alienation and conveyance by the said William M. of the said last-mentioned close to the said James as hereinafter set forth: And the said James further says, that the said William M. continuing so seised of the said last-mentioned close afterwards, and before any of the said times when, &c. to wit, on the thirty-first of December A. D. 1788, at the parish aforesaid, by a certain indenture of bargain and sale then and there made between the said William M. of the one part, the said James and one Simon Gordon of the other part, which said indenture, sealed with the seal of the said William M. and bearing date the day and year last aforesaid, the said James now brings here into court, he the said William M. for the considerations therein mentioned, bargained and sold to the said James (amongst other things) the said close called the New Tynning, together with all ways, paths, passages, and appurtenances whatsoever thereto belonging, or in anywise appertaining, to hold the same to the said James and Simon Gordon from the day next before the day of the date of the same indenture for the term of one whole year from thence next ensuing, and fully to be complete and ended; by virtue of which said indenture, and by force of the statute for transferring uses into possession, the said James and Simon G. became and were possessed of the same close, with the appurtenances, for the said term of one year to them thereof granted as aforesaid, the reversion thereof, after the expiration of the said year, belonging to the said William M. his heirs and assigns; and the said James and Simon G. being so possessed of the said last-mentioned close, with the appurtenances, so bargained and sold to them as aforesaid, and the reversion thereof belonging as aforesaid afterwards, to wit, on the first of January A. D. 1789, at the parish aforesaid, by a certain indenture of release then and there made between the said William M. of the first part, the said James of the second part, and the said Simon G. of the third part (which said last-mentioned indenture, sealed with the seal of the said William M. and bearing date the day and year last aforesaid, the said James now brings here into court), he the said William M. for the considerations therein mentioned, granted, aliened, and released to the said James and Simon G. amongst other things, the said reversion of and in the said close called the New Tynning, together with such ways, paths, passages, and appurtenances thereto as aforesaid, to hold the same unto and to the use of the said James and S. G. and the heirs and assigns of the said James in trust as to the estate and interest of the said Simon G. for the said James, his heirs and assigns; by virtue of which said last-mentioned indenture, and by

force of the statute for transferring uses into possession, the said James and Simon G. became and were, and from thence hitherto have been, and still are lawfully seised of the same close, with the appurtenances, in their demesne as of fee in manner aforesaid : And the said James further says, that he at the said several times when, &c. was in the actual possession and occupation of the said close called the New Tynning, wherefore he the said James and his servants by his command having occasion to use the said way through and over the said close in which, &c. at the said several times when, &c. went, passed, and repassed on foot, and with the carts, waggons, and other carriages of the said James, and the said cattle drawing the same in, by, and along the said way there from the said highway unto and into the said close called New Tynning, and so back again in the said way there, using the same as they lawfully might for the cause aforesaid, and in so doing the said James and his said servants with their feet in walking, and with the aforesaid cattle, necessarily and unavoidably trod down, trampled upon, consumed, and spoiled a little of the grafs and corn of the said John then standing, growing, and being in the said close in which, &c. in the said way there, and the said cattle in so passing and repassing along and through the said way at the said several times when, &c. by stealth, and against the will of the said James eat up and depastured a little of the said grafs and corn of the said John then standing, growing, and being in the said close in which, &c. in the said way there, and on the sides thereof, and the said James and the said servants, with the said wheels of the said carts, waggons, and other carriages in passing and repassing with the same in and along the said way there, necessarily and unavoidably tore up, turned up, and subverted a little of the soil of the said John of his said close in which, &c. doing as little damage there to the said John as they possibly could, and because the said way at one of the said times when, &c. was wrongtully blocked up and obstructed by the said gates, hedges, fences, rails, sticks, and ricks of hay in the said declaration mentioned, so that the said James could not then and there have, use, and enjoy the said way as he then of right ought to have done, without some breaking down, throwing down, pulling down, prostrating, breaking open, breaking to pieces, damaging, spoiling, and destroying the said gates, and breaking to pieces, forcing open, breaking open, wrenching open, demolishing, and spoiling the said locks, staples, and hinges, and without some breaking down, throwing down, prostrating, pulling up, pulling to pieces, demolishing, and destroying the said hedges, fences, posts, and rails, and without pulling down, throwing down, oversetting, and overturning the said stacks and ricks of hay, and the removal of the said obstructions, he the said James, at the said last mentioned times when, &c. in order to open the said way, and to enable him to use the same as he lawfully might, did necessarily break down, throw down, pull down, prostrate, break open, and a little break to pieces, spoil, and destroy the said gates, and did force
open,

open, break open, wrench open, and a little break to pieces, demolish, and spoil the said locks, staples, and hinges, and did break down, throw down, prostrate, pull up, pull to pieces, demolish, and destroy the said hedges, fences, posts, and rails, and did also pull down, throw down, overfer, and overturn the said stacks and ricks of hay, and thereby and in the removal of the said hay to a little and convenient distance in the said close in which, &c. (where the said James left the same for the use of the said John) he the said James unavailably scattered some small part thereof in and about the said close, and left some other small part thereof lying in the said way there, and in going and passing along the said way with his carts, waggons, and other carriages, and the cattle drawing the same at the said last-mentioned time when, &c. did with his said cattle, and with the wheels of his aforesaid carts, waggons, and other carriages, necessarily tread down, trample upon, crush, consume, and spoil a little of the said hay so then lying in the said way as aforesaid, doing as little damage to the said John on that occasion as he possibly could, which are the same trespasses in the introductory part of this plea mentioned, and whereof the said John hath above complained against him; and this the said James is ready to verify; wherefore he prays judgment in the said John ought to have his aforesaid action thereof maintained against him, &c. : And for a further plea as to the breaking and entering, &c. (the same trespasses averred by the preceding justification) (*allegation*); because he says, that the said close in the said declaration mentioned, and in which, &c. is contiguous and adjoining towards the south-side thereof to a certain ancient and public highway in the said parish, and towards the north-side thereof to a certain other close in the said parish called the New Tynning, and that before and at the said several times when, &c. the said James and one Simon Gordon were and still are lawfully seised in their demesne as of fee of and in the said last-mentioned close, with the appurtenances, and the said James at those several times was and still is in the actual possession and occupation thereof: And the said James further says, that during the time aforesaid there was not nor hath been any other way belonging or appertaining to the said last-mentioned close, to go, return, pass, and repass on foot, and with carts, waggons, and other carriages, and the cattle drawing the same to the said last-mentioned close, save and except from and out of the aforesaid highway, through, over, and along the said close in which, &c. unto and into the said close called the New Tynning, for which reason the said James hath had and used, and of necessity ought to have and use a convenient way for himself and his servants to go, return, pass, and repass on foot, and with carts, waggons, and other carriages, and the cattle drawing the same from and out of the aforesaid highway, through, over, and along the said close called the New Tynning, and from thence back again through, over, and along the said close in which, &c. unto and into the said highway every year at all times of the year at his and their

3d Plea, that there was no other way.

free will and pleasure, for the necessary use and occupation of the said close called the New Tynning; wherefore the said James and his servants by his command at the said several times when, &c. being so entitled to and having occasion to use such way as afore-
said through and over the said close in which, &c. at the said several times when, &c. went, passed, and repassed on foot, and with the carts, waggons, and other carriages of the said James, and the said cattle drawing the same in, by, and along the said way there-
from the said highway unto and into the said close called the New Tynning, and so back again in the said way there, being the near-
est and most convenient way through the said close in which, &c. using the same as they lawfully might for the cause aforesaid, and in so doing, &c. &c. [Verbatim as in the former justification to the end.]

S. MARRYAT.

Replication to
2d plea, travers-
ing that at the
time of the alien-
ation there was
no other way as
in that plea is
mentioned, and
to the 3d plea,
*deinjuria sua pro-
pria*; also tra-
versing that
there was no
other way.

And the said John, as to the said plea of the said James by him secondly above pleaded in bar as to the several trespasses in the in-
trodutory part of that plea mentioned, and thereby attempted to be justified, says, that he by reason of any thing in that plea alleg-
ed ought not to be barred from having and maintaining his afore-
said action thereof against the said James; because he says, that true it is that the said William M. for divers years before the
making of the alienation and conveyance to the said John of the
said close in which, &c. was seized in his demesne as of fee as well
of the said close in which, as of the said other close called the
New Tynning in that plea mentioned, with their respective appur-
tenances, and being seized of the said respective closes, he grant-
ed, aliened, and conveyed the said close in which, &c. with the ap-
purtenances, to the said John, his heirs, and assigns, as in that plea
is mentioned; but the said John further says, that the said James,
at the said several times when, &c. of his own wrong broke and
entered the said close in which, &c. and committed the several of
the said trespasses therein in the introdutory part of that plea
mentioned, in manner and form as the said John hath above
thereof complained against him; without this, that at the time of
such alienation and conveyance of the said close in which, &c. to
the said John, the said William M. his farmers and tenants, oc-
cupiers of the said close called the New Tynning, had no other way
for themselves and their servants to go, turn, pass, and repass on
foot, and with carts, waggons, and other carriages, and the cattle
drawing the same to and from the said last-mentioned close, five
and except a certain way from and out of the aforesaid highway
in the parish aforesaid through, over, and along the said closes in
which, &c. unto and into the said close called the New Tynning,
and from thence back again through, over, and along the said close
in which, &c. unto and into the said highway, and that the said
William M. for himself, his farmers and tenants, occupiers of
the said close called the New Tynning, after such alienation and con-
veyance of the said close in which, &c. to the said John, necessarily
ought to have had for themselves and their servants such way as
aforesaid,

aforesaid, to go, return, pass, and repass in manner aforesaid on foot, and with carts, waggons, and other carriages, and the cattle drawing the same every year at all times of the year at his and their free will and pleasure, for the necessary use and occupation of the said close called the New Tynning, in manner and form as the said James hath in his said second plea in that behalf above alledged; and this the said John is ready to verify; wherefore since the said James hath above acknowledged the committing the several trespasses in the introductory part of his said second plea mentioned, he the said John prays judgment and his damages by reason of the committing thereof to be adjudged to him, &c. : And the said John, as to the said plea by the said James by him lastly above pleaded in bar as to the said several trespasses in the introductory part of that plea mentioned, and thereby attempted to be justified, says that he, by reason of any thing by the said James in that plea alledged, ought not to be barred from having and maintaining his aforesaid action thereof against him; because he says, that the said James, at the said several times when, &c. of his own wrong broke and entered the said close in which, &c. and committed the residue of the said trespasses therein in the introductory part of that plea mentioned, in manner and form as the said John hath above thereof complained against him, &c. ; without this, that during the said time in that last plea in that behalf mentioned there was not nor hath been any other way belonging or appertaining to the said close called the New Tynning, to go, return, pass, and repass on foot, and with carts, waggons, and other carriages, and the cattle drawing the same to the said last-mentioned close save and except from and out of the aforesaid highway in the parish aforesaid, through, over, and along the said close in which; &c. unto and into the said close called the New Tynning, and that the said James hath had and used, and of necessity ought to have and use a convenient way for himself and his servants to go, return, pass, and repass on foot, and with carts, waggons, and other carriages, and the cattle drawing the same from and out of the aforesaid highway through, over, and along the said close in which, &c. unto and into the said close called the New Tynning, and from thence back again through, over, and along the said close in which, &c. unto and into the said highway every year at all times of the year at his and their free will and pleasure, for the necessary use and occupation of the said close called the New Tynning, in manner and form as the said James hath in his said last-mentioned plea in that behalf above alledged; and this the said John is ready to verify; wherefore inasmuch as the said James hath above acknowledged the committing the said several trespasses aforesaid in the introductory part of his said last plea mentioned, he the said John prays judgment and his damages by reason of the committing those trespasses to be adjudged to him, &c.

To 3d Plea, *injuria, &c.*

V. GIBBS.

Rejoinder to replication to ad-
plea, that de-
fendant ought to
have a conveni-
ent way after
such alienation,
taking issue on
the traverse, and
taking issue on
the traverse ten-
dered in the re-
plication to the
third plea.

And the said James, as to the said replication of the said John, to the said plea of the said James by him secondly above pleaded in bar as to the several trespasses in the introductory part of that plea mentioned, and thereby justified, says as before, that at the time of such alienation and conveyance of the said close in which, &c. to the said John, the said William M. his farmers and tenants, occupiers of the said close called the New Tynning, had no other way for themselves and their servants to go, return, pass, and repass on foot, and with carts, waggons, and other carriages, and the cattle drawing the same to and from the said last-mentioned close, save and except a certain way from and out of the afore said highway in the parish afore said, through, over, and along the said close in which, &c. unto and into the said close called the New Tynning, and from thence back again through, over, and along the said close in which, &c. unto and into the said highway, and that the said William M. for himself, his farmers and tenants, occupiers of the said close called the New Tynning, after such alienation and conveyance of the said close in which, &c. to the said John, necessarily ought to have had for themselves and their servants such way as afore said, to go, return, pass, and repass in manner afore said on foot, and with carts, waggons, and other carriages, and the cattle drawing the same every year at all times of the year at his and their free will and pleasure, for the necessary use and occupation of the said close called the New Tynning, in manner and form as the said John hath in his said second plea in that behalf above alleged; and of this he puts himself upon the country, &c.; and the said John doth the like: And as to the said replication of the said John to the said plea of the said James by him lastly above pleaded in bar as to the several trespasses in the introductory part of that plea mentioned, and thereby justified, the said James says as before, that during the said time in that last plea in that behalf, there was nor hath been any other way belonging or appertaining to the said close called the New Tynning, to go, return, pass, and repass on foot, and with carts, waggons, and other carriages, and the cattle drawing the same to the said last-mentioned close, save and except from and out of the afore said highway in the parish afore said, through, over, and along the said close in which, &c. unto and into the said close called the New Tynning, and that the said James hath had and used, and of necessity ought to have and use a convenient way for himself and his servants to go, return, pass, and repass on foot, and with carts, waggons, and other carriages, and the cattle drawing the same from and out of the afore said highway through, over, and along the said close in which, &c. unto and into the said close called the New Tynning, and from thence back again through, over, and along the said close in which, &c. unto and into the said highway every year at all times of the year at his and their free will and pleasure, for the necessary use and occupation of the said close called the New Tynning, in manner and form as the said James hath in his said last-mentioned plea in that behalf above alledged; and

of

of this he also puts himself upon the country; and the said John doth the like; therefore, &c.

S. MARRYAT.

Trinity Term, 28. Geo. III.

SURRY, to wit. Martin Bladon Tinker, esquire, puts in his place Joseph Hickey his attorney, against James Mothy, in a plea of trespass. Surry, to wit. The said James Mothy puts in his place Charles Jemmot his attorney, at the suit of the said Martin Bladon Tinker, in the plea aforesaid. Surry, to wit.

Warrant of attorney.

Be it remembered, that on Friday next after the morrow of the Holy Trinity in this same term, before our lord the king at Westminster, comes M. B. T. esquire, by J. H. his attorney, and brings into the court of our said lord the king, before, &c. now here, his certain bill against James M. being, &c. of the said lord the king, before, &c. of a plea of trespass, and there are pledges for the prosecution, to wit, John Doe and Richard Roe, which said bill follows in these words, to wit, Surry, to wit:

Memorandum.

M. B. T. esquire, complains of James M. being, &c.; for that the said James, on the fourteenth day of May, A. D. 1788, with force and arms broke and entered the close of the said M. B. T. situate and being in Weybridge, in the said county of S. and with his feet in walking trod down, consumed, and spoiled the grafs of M. B. T. of the value of forty shillings there then growing, and with cattle, to wit, horses, mares, and geldings, eat up, trod down, consumed, and spoiled other the grafs of the said M. B. T. of the value of other forty shillings there also then growing, and with his hands, and with saws, pickaxes, and other instruments pulled up, pulled down, sawed down, cut down, and destroyed the posts and rails, to wit, twenty posts and forty rails of the said M. B. T. of the value of ten pounds there then standing and being on the said close, and took and carried away the materials, to wit, ten cart loads of wood of the said M. B. T. of the value of ten pounds thereof coming, and converted and disposed thereof to his own use, and other wrongs then and there did to the said M. B. T. against the peace of our lord the now king, and to the said M. B. T. his damage of one hundred pounds; and therefore he brings his suit, &c.

Declaration for entering close, spoiling grafs, destroying posts and rails, &c.

And the said James, by Charles J. his attorney, comes and defends the wrong and injury, when, &c. and says that he is not guilty of the trespasses above laid to his charge, in manner and form as the said Martin B. hath above thereof complained against him; and of this he puts himself upon the country; and the said M. B. doth the like; therefore let a jury thereupon come before our lord the king at Westminster, on Wednesday next after three weeks of the Holy Trinity, twelve, &c. by whom, &c. and who neither, &c. to recognize, &c. because as well, &c. the same day is given to the parties aforesaid, at the same place,

plea.

Termin.

At

Continuance by
non misa breve.

At which day, before our lord the king at Westminster, comes as well the said Martin B. as the said James, by their attornies aforesaid, and the sheriff hath not sent the said writ, nor hath he done any thing; therefore let a jury thereupon come before our lord the king at Westminster, on Thursday next after the morrow of All Souls, by whom, &c. and who neither, &c. to recognize, &c. because as well, &c. the same day is given to the parties aforesaid at the same place; at which day, before our said lord the king at Westminster, come as well the said Martin B. as the said James, by their attornies aforesaid, and the sheriff hath not sent the said writ, nor hath he done any thing thereupon; therefore let a jury thereupon come before our lord the king at Westminster, on Tuesday next after eight days of St. Hilary, by whom, &c. and who neither, &c. to recognize, &c. because as well, &c. the same day is given to the parties aforesaid at the same place; at which day, before our lord the king at Westminster, come as well the said Martin B. as the said James, by their attornies aforesaid, and the

Respite of jury.
res.

jury is respite between them before our lord the king at Westminster until Wednesday next after fifteen days from the day of Easter, unless his majesty's justices assigned to hold the assizes in and for the county of Surry, shall first come on Wednesday the twenty-fifth of March, at Kingston in the said county, according to the form of the statute, &c. for default of the jurors, because none of them did appear: And be it known, that the king's writ in this case on record, was delivered to the deputy sheriff of the said county, on the twelfth of February in the said term of St. Hilary, to be executed according to law at his peril; and now at this day, that is to say, on Wednesday next after fifteen days from the day of Easter, before our lord the king at Westminster, come the said James, by his attorney aforesaid, and the justices of our said lord the king, before whom the above issue was tried, have sent hither their record before them had, in these words, to wit:

Postea.

Afterwards at the day and place within contained, before the honourable sir H. Gould, knight, one of the justices of our said lord the king of his court of common pleas at Westminster, and the honourable sir B. Hotham, knight, one of the barons of his majesty's court of exchequer at Westminster, justices of our said lord the king assigned to hold the assizes for the within written county of Surry, according to the form of the statute, &c. come as well the within named M. B. T. esquire, as also the within named James M. by their attornies within contained; and the jurors of the jury whereof mention is within made, being impanelled and drawn by ballot, according to the form of the statute, &c. and called over, come, who to speak the truth of the matters therein contained being tried and sworn, withdrew from the bar to consult on their verdict thereupon to be given, and it was consulted and agreed among them to give in their verdict, and for that purpose they came back here again to the bar, whereupon the said M. B. T. although solemnly called, cometh not again, nor further

ther prosecute his suit in this behalf against the said James M.; therefore it is considered by the court here that the said M. B. take nothing by his said bill, but that he and his pledges to prosecute be in mercy, &c. and that the said James may depart the court here without day, &c.: and because it duly appears by affidavit to the said court here, that this action was brought by M. B. against the said James for things done by him in pursuance and by the authority of a certain act of parliament, made and passed in the thirteenth year of the reign of the said lord the king, entitled, "An Act to explain, amend, and reduce into one Act of Parliament the Statutes now in being for the Amendment and Preservation of the public Highways within that Part of Great Britain called England, and for other Purposes," it is further considered, that the said James recover against the said M. B. one hundred and twenty three pounds, for the treble costs and charges of the said James by him about his defence in this behalf expended, by the said court here adjudged to the said James with his assent, according to the form of the said last-mentioned statute; and that the said James have execution thereof, &c.

S. MARRYAT.

Judgment signed day of 1789. Mercy.

Award of treble costs to the defendant under the highway act.

James Mothy of, &c. defendant in this cause, maketh oath and saith, that the plaintiff, on or about the day of last, brought an action against this deponent, and declared therein for breaking and entering his close at Weybridge, in the county of S. and cutting down and destroying his posts and rails there, to which action this defendant appeared and pleaded the general issue not guilty; whereupon issue was joined: And this deponent further saith, that the said issue came on to be tried before Mr. Justice Gould, at the last assizes for the county of S. when the plaintiff was nonsuited upon the testimony of his own witnesses: And this deponent further saith, that at a special sessions, holden according to the general highway act, on the day of October 1787, he this deponent was by the justices acting for the limit of the said county in which the parish of W. is situated, duly appointed by warrant under the hands and seals of such justices to the office of surveyor of the highways for the parish of Weybridge for the year then ensuing, which office this deponent accepted and continued to execute until the expiration of his year: And this deponent further saith, that being such surveyor of the highways as aforesaid, he, on or about the day of 178 , left notice in writing at the usual place of abode of the above named plaintiff, that the posts and rails, for the removing of which this action was brought, and which had been set up by him about before, were an obstruction and annoyance on the common highway, and which notice this deponent left by the directions of a vestry meeting of the parishioners of Weybridge: And this deponent further saith, that he this deponent did not remove the said posts and rails until more than twenty days after the leaving such notice, and that he pulled down the same by virtue of the before mentioned act, and in the execution of his office on the ground of the *locus in quo*, being

Form of an affidavit to recover treble costs by defendant under the highway act, where the plaintiff was nonsuited in his action.

Vide 13. Geo. c. 78. s. 12. &c.

TRESPASS to FISHERY—

being a common highway within the said parish of W. and the said posts and rails being an obstruction there; upon which same grounds the plaintiff was nonsuited: And this deponent further saith, that this action was brought against this deponent for the supposed trespasses hereinbefore mentioned, and no others; and that all the supposed trespasses for which this action was brought were committed by virtue of the said act, and in the execution of this deponent's office of surveyor of the highways for the said parish of Weybridge.

Upon this affidavit a rule nisi was obtained, and afterwards made absolute without objection for entering a suggestion upon the roll for treble costs, and a direction to the master to tax them accordingly. It is, however, from the cases of *Rex v. Pollard*, 5 R. 50; *Barton v. Miles*, 12 R. 126; and *Hurt v. Robinson*, 5 R. 16, that whenever accumulative costs are given by

statute and no certificate by the judge at nisi prius directed, the proper mode of obtaining it is by motion for a suggestion upon an affidavit of the facts. *Vide Dugg*, 204. It appears likewise from the case of *Hickman v. Cooky*, 2 Str. 1120, that the master is to allow the defendant treble costs of the suggestion and application for it as well of the defendant.

TRESPASS to FISHERY.

King's Bench, Trinity Term, 27. Geo. III.

For fishing in plaintiff's fishery, entering closes, breaking down rails, treadmg down grass, &c.

SURRY, to wit. Charles Carpenter, esquire, complains of Thomas Lacy, being, &c.; for that the said Thomas, on the fourth of May 1787, and on divers other days and times between that day and the day of exhibiting the bill of the said Charles, with force and arms broke and entered the close of the said C. to wit, one close covered with water called the River Mole, one other close called Cooper's Meadow, one other close called the Meadow, otherwise Mr. Weston's Meadow, one other close called the Pleasure-Ground, and one other close called the Corner, otherwise the Watering Place, situate and being in the parish of Cobham, in the said county of Surry, and fished in the several fishery of the said Charles in his said first-mentioned close for fish, and the fish of and in the said fishery of the said Charles, to wit, one hundred salmon, one hundred trout, one hundred perch's, one hundred chub, one hundred dace, one hundred roaches, one hundred pike, and one hundred eels, of the value of twenty pounds, there found, caught, took, and carried away, and converted and disposed of the same to his own use, and cut down, broke down, threw down, broke to pieces, prostrated, and destroyed the posts, rails, and chains, to wit, thirty posts, thirty rails, and thirty yards of the chains of the said Charles then erected, fixed, and placed in and upon the said several closes, and the materials thereof coming, to wit, two cart loads of wood, and one hundred pounds weight of iron, of the value of ten pounds, took and carried away, and converted and disposed

disposed of the same to his own use, and with his feet in walking trod down, consumed, and spoiled the grass of the said Charles then growing in his said closes called Cooper's Meadow, the Meadow, otherwise Mr. Weston's Meadow, the Pleasure Ground, and the Corner, otherwise the Watering Place, of the value of forty pounds: And also for that the said Thomas afterwards, to wit, ^{2d Count, free fishery.} on the said fourth day of May, in the said year of Our Lord 1787, and on divers other days and times between that day and the day of exhibiting the bill of the said Charles, broke and entered a certain other several "the free" fishery of the said Charles, at the said parish of Cobham, in the said county of S. and fished therein for fish, and other the fish of the said last-mentioned fishery of the said Charles, to wit, one hundred other, &c. &c. &c. &c. of the value of other twenty pounds, then and there found, caught, took, and carried away, and then and there converted and disposed thereof to his own use. [3d Count exactly like the second, omitting the ^{3d Count, free-rail fishery.} words in *Italic*, and inserting the words within inverted commas; and other wrongs, &c.

And the said Thomas, by John Barber his attorney, comes and Pleas; 1st, Not defends the force and injury, when, &c. and says he is not guilty of guilt. the premises above laid to his charge, in manner and form as the said Charles hath above thereof complained against him; and of this he puts himself upon the country, &c.; and the said Charles doth the like: And for further plea in this behalf, as to the entering the said close covered with water called the River Mole, in the first Count of the said declaration mentioned, and fishing in the fishery of that close for fish, and the fish there found catching, taking, and carrying away, and converting and disposing of the same, and throwing down, breaking to pieces, and prostrating the said posts and chains in the said first Count mentioned, and the materials thereof coming taking and carrying away, and converting and disposing thereof above supposed to have been committed by the said Thomas, he the said Thomas, by leave of the court here to him for that purpose granted, according to the form of the statute in such case made and provided, says, that he the said Charles ought not to have his aforesaid action thereof maintained against him; because he says, that one James Cooper, long before and at the several times when, &c. was and still is seized in his demesne as of fee of and in two ancient water corn mills under one roof, called Cobham Mills, with the appurtenances, standing and being on a certain ancient river called the River Mole, at the parish of C. aforesaid; and that the said James Cooper and all those whose estate he now hath, and at the said several times when, &c. had of and in the said mills, with the appurtenances, from time whereof the memory of man is not to the contrary, have had and have used, and been accustomed to have, and of right ought to have had, and the said James Cooper still of right ought to have common of fishery in the said river and fishery in which, &c. every year, at all seasonable times of the year, at their free will and pleasure, as to the ^{2d, Justification, defendant fished by command of his master in right of common of fishery appurtenant to two ancient mills of which he was seized in his demesne as of fee, and pulled down a title of the rolls in order to enjoy fishery.} the

the said mills, with the appurtenances, belonging and appertaining; and the said James C. being so seised of the said mills, with the appurtenances, he the said Thomas, at the said several times when, &c. being seasonable times of the year for that purpose, as the servant of the said James Cooper, and by his command, entered the said river and fishery in which, &c. and fished therein for fish, and the fish therein found caught, took, carried away, and converted and disposed of the same to the use of the said James Cooper, using his said common of fishery there; and because the said posts and chains had been wrongfully erected, fixed, and placed, and at one of the said times when, &c. were standing and being in the said close covered with water in which, &c. so that without removing the said posts and chains the said common of fishery could not be then and there used and enjoyed in so ample and beneficial a manner as it otherwise might and ought to have been, he the said Thomas, at the said last-mentioned time when, &c. as the servant of the said James Cooper, and by his command, in order to have the full use and enjoyment of the said common of fishery in the said close covered with water in which, &c. did throw down and prostrate the said posts and chains, and in so doing did a little break the same to pieces, and the materials thereof coming took, and carried away, and left at a little distance, and in a proper and convenient place for the use of the said Charles, as he lawfully might for the cause aforesaid, doing as little damage on that occasion as he possibly could, which are the same trespasses in the introductory part of this plea mentioned, whereof the said Charles hath above complained against the said Thomas; and this he the said Thomas is ready to verify; wherefore he prays judgment if he the said Charles ought to have his action thereof maintained against him, &c.: And for a further plea in this behalf, as to the entering the said close covered with water called the River Mole, in the said first Count of the said declaration mentioned, and throwing down, breaking to pieces, and prostrating the said posts and chains in that Count mentioned, and the materials thereof coming, taking, and carrying away, and converting and disposing thereof, above supposed to have been committed by the said Thomas, he the said Thomas, by like leave, &c. (*actio non*); because he says, that one James Cooper, long before and at the said several times when, &c. was, and still is seised in his demesne as of fee of and in two ancient water corn mills under one roof called Cobham Mills, with the appurtenances, standing and being in the said river called the River Mole, at the parish of C. aforesaid, and that the said river, from time whereof the memory of man is not to the contrary, until the obstruction thereof hereinafter mentioned, hath run and flowed, and hath used and been accustomed to run and flow, and still of right ought to run and flow through and from the said mills in its ancient and accustomed course, unto, over, and along the said close covered with water in which, &c. without any obstruction or hinderance whatsoever; and the said James Cooper, and all those whose estate he now hath, and at the several

3d, Rubbish collected about rails obstructed water flowing through and from mills.

several times when, &c. had of and in the said mills, with the appurtenances, from time whereof the memory of man is not to the contrary, have had and have used, and been accustomed to have, and of right ought to have, and the said James C. still of right ought to have the use and benefit of the water of the said river running and flowing in manner aforesaid, for the convenient working and enjoyment of the said mills, with the appurtenances, as to the said mills, with the appurtenances belonging, and appertaining; and because the said posts and chains had been wrongfully erected, fixed, and placed at one of the said times when, &c. were standing and being in the said close covered with water in which, &c. in and across the said river, and together with divers large quantities of weeds and rubbish which had collected and lodged upon and against the said posts and chains were obstructing and hindering the said river from running and flowing through and from the said mills in its ancient and accustomed course there, to the great damage of the said mills, which by reason of the said obstruction and hinderance could not be worked and enjoyed in so ample and beneficial a manner as they otherwise might and ought to have been, he the said T. at the said last-mentioned time when, &c. as the servant of the said James Cooper, and by his command entered the said close covered with water in which, &c. in order to remove, and did then and there throw down, and prostrate the said posts and chains, and in so doing did a little break the same to pieces, and the materials thereof coming took and carried away, and left at a little distance, and in a proper and convenient place for the use of the said Charles as he lawfully might, doing as little damage as he possibly could, which are the same, &c.; and this, &c.; wherefore, &c.: And for further plea in this behalf as to the entering the said several closes called the Corner, otherwise the Watering Place, Cooper's Meadow, Mr. Weston's Meadow, and the Pleasure Ground in the said first Count of the said declaration mentioned, and with his feet in walking and treading down the grass then growing in the said closes above supposed to have been committed by the said Thomas, he the said T. by like leave, &c. (*adlio non*); because he says, that the said Charles, before the said time when, &c. resided in a certain dwelling-house at the said parish of C. situate and standing in the said close called the Pleasure Ground in which, &c. and that for a long space of time now last past there hath been a certain common and usual way to the said dwelling-house of the said C. through and over the said several closes called the Corner, otherwise the Watering Places, Cooper's Meadow, Mr. Weston's Meadow, and the Pleasure Ground in which, &c. And the said Thomas says, that, at one of the said times when, &c. he the said Thomas had a lawful occasion to speak with the said C. at his said dwelling-house, wherefore he the said Thomas, at the said last-mentioned time when, &c. entered and passed through the said closes called the Corner, otherwise the Watering Place, Cooper's Meadow, Mr. Weston's Meadow, and the Pleasure Ground in which, &c. in and along the

4th Plea, went to speak to plaintiff in a usual way leading to plaintiff's house, whereby he trod down little of the grass.

the said common and usual way to the said dwelling-house of the said C. in order to speak with the said C. and in so doing he the said T. did unavoidably with his feet in walking tread down a little of the grass then growing in the said closes as he lawfully might for the cause aforesaid, which are the same, &c.; and this, 5th plea, licence. &c.; wherefore, &c.: Fifth plea as to the same trespasses as are justified by the fourth, (*actio non*); because he says, that he the said T. by the leave, licence, and consent of the said C. to him in that behalf given at the said parish of C. entered the said closes called the Corner otherwise the Watering Place, Cooper's Meadow, Mr. W's Meadow, and the Pleasure Ground in which, &c. and with his feet in walking trod down a little of the grass then growing in the said closes as he lawfully might for the cause aforesaid, which are the same, &c.; and this, &c.; wherefore, &c.; if, &c. S. MARRYAT.

Replication as to second plea, traverses right of common to fishery; as to third *de injuria sua propria* and issue; fourth, novel assignment to part of second plea; fifth, traverse and issue.

And as to the plea of the said Thomas by him secondly above pleaded in bar as to the said several trespasses in the introductory part of that plea mentioned by the said Thomas above acknowledged to have been committed, the said Charles says, that he by reason of any thing in that plea alledged, ought not to be barred from having and maintaining his aforesaid action thereof against the said Thomas, because he says, that the said Thomas of his own wrong at the said several times when, &c. entered the said close covered with water called the River Mole, in the first Count of the said declaration mentioned, and fished in the fishery of that close for fish, and the fish there found, caught, took, and carried away, and converted and disposed of the same, and threw down, broke to pieces, and prostrated the said posts and chains in the said first Count mentioned, and the materials thereof coming took and carried away, and converted and disposed thereof in manner and form as the said Charles hath above complained against him the said Thomas; without this that the said James Cooper and all those whose estate he now hath, and at the said several times when, &c. had of and in the said mills, with the appurtenances, in the second plea mentioned, from time whereof the memory of man is not to the contrary, have had and have used, and been accustomed to have, and of right ought to have had, and the said James Cooper still of right ought to have common of fishery in the said river and fishery in which, &c. every year at all seasonable times of the year at their free will and pleasure; and as to the said mills, with the appurtenances, belonging and appertaining as the said Thomas hath in his said plea secondly above pleaded in bar alledged; and this the said Charles is ready verify; wherefore inasmuch as the said Thomas hath above acknowledged the aforesaid trespasses, he the said Charles prays judgment and his damages, by him sustained by reason of the committing thereof, to be adjudged to him, &c.: And as to the said plea of the said Thomas by him thirdly above pleaded in bar as to the said several trespasses in the introductory part of that plea mentioned above acknowledged

ledged to have been committed by the said Thomas, the said Charles says, that he, by reason of any thing in that plea alledged, ought not to be barred from having and maintaining his aforesaid action thereof against the said Thomas; because he says, that true it is that the said James Cooper, long before and at the said several times when, &c. was and still is seized in his demesne as of fee of and in the said two ancient water corn mills under one roof called Cobham Mills, with the appurtenances, standing and being on the said river called the river Mole, at the parish of C. aforesaid, and that the said river from time whereof the memory of man is not to the contrary, hath run and flowed, and hath used and been accustomed to run and flow, and still of right ought to run and flow through and from the said mills in its ancient and accustomed course, unto, over, and along the said close covered with water in which, &c. without any obstruction or hinderance whatsoever; and that the said James C. and all those whose estate he now hath, and at the said several times when, &c. had of and in the said mills, with the appurtenances, from time whereof the memory of man is not to the contrary, have had and have used, and been accustomed to have, and of right ought to have had, and the said James Cooper still of right ought to have the use and benefit of the water of the said river running and flowing in manner aforesaid, for the convenient working and enjoyment of the said mills, with the appurtenances, belonging and appertaining in manner and form as the said Thomas hath in his said plea thirdly above pleaded in bar alledged; but the said C. further says, that the said T. of his own wrong, and without the *refusal* of the cause in his said plea thirdly above pleaded in bar alledged, at the said times when, &c. in the said declaration mentioned, did enter the said close covered with water called the River Mole in the first Count of the said declaration mentioned, and threw down, broke to pieces, and prostrated the said posts and chains in that Count mentioned, and the materials thereof coming, took, and carried away, and converted and disposed thereof in manner and form as the said C. hath above thereof complained against him the said Thomas; and this he the said C. prays may be enquired of by the country, and the said T. doth the like: And as to the said plea of the said T. by him secondly above pleaded in bar as to the said several trespasses in the introductory part of that plea mentioned above acknowledged to have been committed by the said T. the said C. says, that he, by reason of any thing in that plea alledged, ought not to be barred from having and maintaining his aforesaid action thereof against the said Thomas; because he says, that he exhibited his said bill and brought his said action against the said T. for that the said T. (amongst other trespasses in the said declaration mentioned, at the said times when, &c. entered the said several closes called the Cooper, otherwise the Watering Place, Cooper's Meadow, Mr. W.'s Meadow, and the Pleasure Ground in the said first Count of the said declaration mentioned, and with his feet in walking

TRESPASS TO FISHERY—

trod down the grafs then growing in the faid closes, in manner and form as the faid C. hath above thereof complained againft him upon other occafions and for other purpofes than thofe mentioned in the faid laft mentioned plea of the faid T. and this he the faid Charles is ready to verify; wherefore inafmuch as the faid T. hath not answered the faid trefpaffes herein above newly assigned, and the faid Charles prays judgment and his damages, by reafon of the committing of thofe trefpaffes, to be adjudged to him, &c. And as to the faid plea of the faid T. by him laftly above pleaded in bar as to the faid feveral trefpaffes in the introductory part of that plea mentioned, above acknowledged to have been committed by the faid T. the faid C. fays, that he, by reafon of any thing by the faid T. in his faid laft plea laftly above pleaded in bar alledged, ought not to be barred from having and maintaining his aforefaid action againft the faid T. becaufe he fays, that he the faid C. did not give to the faid Thomas any fuch leave, licence, or confent for the purpofes in that plea mentioned as the faid Thomas hath in that plea above alledged; and this he the faid Charles prays may be enquired of by the country, &c.; and the faid Thomas doth the like.

A. CHAMBERE.

Plea to novel
affignment, and
issue.

And the faid Thomas fays, as before, that the faid James Cooper and all thofe whofe eftate he now hath and at the faid feveral times when, &c. had of and in the faid mills, with the appurtenances, in the faid fecond plea mentioned, from time whereof the memory of man is not to the contrary, have had and have ufed, and been accuftomed to have, and of right ought to have had, and the faid James Cooper ftill of right ought to have common of fifhery in the faid river and fifhery in which, &c. every year, at all reasonable times of the year at their free will and pleafure, as to the faid mills, with the appurtenances, belonging and appertaining as the faid Thomas hath in his faid plea fecondly above pleaded in bar alledged, and of this he the faid T. puts himfelf upon the country; and the faid C. doth the like; and the faid T. as to the faid feveral trefpaffes above newly assigned, fays, that he is not guilty thereof in manner and form as the faid C. hath above thereof complained againft him; and of this he alfo puts himfelf upon the country, &c. and the faid C. doth the like, &c.

S. MARRYAT.

Declaration for
entering clofe,
and fifhing and
catching fifh, &c.

LANCASHIRE, to wit. William B. B. complains of E. S. J. W. T. P. and J. B. being, &c. for that they the faid defendants on, &c. and on divers other days and times between that day and the day of exhibiting the bill of the faid plaintiff, with force and arms, &c. broke and entered the clofe of the faid plaintiff, to wit, one clofe covered with water called the River Cloyne, fittuate and being within the parifh of, &c. in, &c. and fifhed in the feveral fifheries of the faid plaintiff there for fifh, and the fifh of and in the faid fifhery of the faid plaintiff, to wit,

ten

PLEA IN RIGHT OF FISHERY.

ten salmon, &c. of the value of ten pounds there found, caught, took, and carried away, and then and there converted and disposed thereof to their own use; and also for that the said defendants afterwards, to wit, on, &c. and on divers, &c. with force and arms, &c. broke and entered his fishery and fished therein. [Third Count, stating them to have broke and entered his fishery and fished therein: fourth Count for seizing, taking, &c. the goods and chattels (a), to wit, ten other salmon, &c.] J. WALLACE.

(a) Mr. Chambre was of opinion that this description was sufficient in an action, though it would be otherwise in an indictment, 6 Mod. 183.

First, Not Guilty, and for further plea in this behalf as to the breaking and entering of the said close covered with water called the River Cloyne in the said declaration above supposed, &c. (ad id non); because they say, that the said close in which, &c. at the said several times when, &c. was, and still is, and from time immemorial hath been part and parcel of a certain river called the Cloyne, in the said county of Lancashire, and that the said river called, &c. in the said part thereof in which, &c. now is and at the said several times when, &c. was, and from time whereof the memory of man is not to the contrary, hath been a public and common navigable river in which the tides and waters of the sea, during all the time aforesaid, have flowed and re-flowed, and that in the said part of the same river called, &c. in which, &c. every subject of this realm at the said several times when, &c. of right had and of right ought to have had, and now hath, and of right ought to have the liberty and privilege of fishing; wherefore the said defendants being subjects of this realm at the said several times when, &c. entered into the said close in which, &c. so being part of such navigable river as aforesaid, when the tides and waters of the sea flow, to fish in the said river there at the said times when, &c. being seasonable times of the year for such fishing, and at those several times did fish there as it was lawful for them to do, which are the same breaking and entering the said close covered with water called, &c. in the said declaration mentioned by the said defendants above supposed to have been done, whereof the said plaintiff hath above complained against them; and this, &c.; wherefore, &c.; if, &c. V. GIBBS.

And the said plaintiff, as to the said plea of the said defendants, whereof they have above put themselves upon the country, he the said plaintiff doth the like, &c.: And the said plaintiff freely acknowledges here in court that he will not further prosecute against the said defendants as to the said first Count in the said declaration mentioned, and the said trespasses therein contained; therefore let the said defendants go thereof quit, &c. and to try the issue above joined between the parties as to the residue of the premises let a jury come, &c. J. WALLACE.

Mr. Lawes's opinion on *noli prosequi*.

The above entry is rather an uncommon proceeding, but in a case, circumstanced as this is, seems proper and judicious. It is calculated to get rid of the difficulties that would necessarily attend a replication to the special plea as well as to prevent an exposure of plaintiff's real title. As the proceedings now stand, the first Count of the declaration is entirely out of the question, and the *onus probandi* does, I think, lie upon the plaintiff. He seems possessed of sufficient evidence to intire a verdict upon the third Count, if not upon the second, of which there may be some doubt. The *visi prius case from Chester* is certainly an authority for the necessity of his shewing an actual grant or the fact of the tides flowing into the rivers being established, but I am inclined to think that that opinion will at this day be disavowed—and that the usage and enjoyment which accompanies the title alone will be sufficient evidence of such a grant having existed to entitle the plaintiff to a verdict; nor are the other cases that have been cited at all the other way. The former is silent as to what sort of proof is necessary, and therefore for ought that appears to the contrary, prescriptive evidence is sufficient, and the latter authority is I think confined to the original grant or instrument itself, which when produced should, perhaps, carry the antiquity contended for, but it by no means excludes the usual evidence of prescription in which a grant is implied. But the case of Carter and Murcot, in 4 Burr. 2162, and subsequent to that at Chester, is conclusive upon the point. There the plea was precisely the same as here, and no more than a prescriptive title was repudied; and if it was sufficient in pleading it will of course be so in evidence. I have only to add then any evidence of *non us* or *interruptio* of the right claimed will be material on the part of the defendants, the general opinion of landholders upon the subject with the circumstances of the privilege of fishing being preserved in their lease will likewise demand attention; but upon the whole, I am of opinion that the plaintiff must recover.

V. LAWES.

The facts of the case on which the above opinion of Mr. Lawes was grounded, with the case by him referred to, and also with Mr. Lees and Mr. Wilton's opinions on the case.

The facts of the case were briefly these: the plaintiff had only a prescriptive right of fishing, and that a part of the river in which, &c. was within the flux and reflux of the tides, the following authorities were cited: 1 Mod. 105, 2 Black. Com. 39. and a cause tried at Chester Assizes about sixteen years ago, between the people of Warrington and one Mr. Dumbell relating to the fishery of the River Mersey. It is said Dumbell could have proved an exclusive and an uninterrupted right therein for ninety eight years and upwards and beyond all remembrance to the contrary, but the judge would not hear evidence of his prescriptive right, but held it an usurpation or encroachment; and said that if ever the sea had flowed to such an arm or branch thereof it was a common fishery, although it was objected on the trial that above the last bridge on a river it might be private property, which objection the judge held of no consequence. The necks there was connected on the Chester side of the river, and the following Questions referred to Mr. Lee and Mr. Wilton for their opinion.

1st Q^y. Whether if plaintiff should be able to prove next to an undisturbed enjoyment and use of the fishery of any particular territory, fifty, sixty years past, or to his memory, continuous, that would vest an exclusive right in him and his heirs thereto, within the flux and reflux of the tides, would such evidence in this case be admissible, and if admitted would establish a right that would amount to full proof in construction or presumption of law, that a regular grant or grants were originally obtained from the crown to those whose estate he hath at the time when fisheries were a branch of the royal prerogative, that through lapse of time or accident they have been lost or destroyed; or would he be obliged to produce the original grants or authentic copies thereof in evidence to support his claim against the public?

2d Q^y. In case the public were to draw nets and fish, would it be sufficient for those against whom actions are brought to plead that the place where, &c. is within the ebbing and flowing and an arm of the sea; and would plaintiff on such plea be put to the proof of his own title; and does Lancaster Bridge, and plaintiff's weirs and locks at Storton,

PLEA—LIBERUM TENEMENTUM.

(the tide flowing beyond both) or either of them, in any way effect or bound the claim of the public?

flux and reflux of the tide; nor in my mind is the river above plaintiff's wear and the locks at Sterton, that which would be held an arm of the sea.

J. LEE.

As to the query first. I am of opinion that by the common law the fishing of navigable rivers where there is flux and reflux of the tides belongs to the crown, and the crown could give it by grant, of which possession from time immemorial is evidence. The fact of enjoyment by the plaintiff's family (if it could be shown when it commenced) could not avail them, and it seems to be intimated as if the exercise of this exclusive fishery is suspected to be a modern thing. I think, supposing the enjoyment constant and uninterrupted from all known antiquity, plaintiff might prescribe for it; though, perhaps, if it were in a creek or bay of the sea it might be necessary to allege a grant. Indeed if a grant were alleged (save the difficulty of fixing the reign, &c. in which it was made) such proof would be sufficient to find a grant upon. To query second. I think if plaintiff should show a title as he may by grant or prescription to the fishery, it will be no defence to allege that it is within the

Plaintiff's claim is such as may be supported by prescription and evidence of an exclusive and an uninterrupted enjoyment and use of the fishery by him and his ancestors, and them under whom he claims as far back as memory can go, and a reputation that it belonged to them will be admissible evidence of a prescriptive right in plaintiff; and as such I think that a jury would be bound to find for the plaintiff upon such a prescriptive right established by usage, and reputation would be as effectual as any grant that could be produced. As to query second, if an action should be brought against any person for fishing within the limits claimed by plaintiff, he defendant, by a proper plea, might put plaintiff upon proving his title. What would be the proper plea will depend upon the nature of the action. I do not conceive that either the bridge or the wear, will affect this question.

JOHN WILSON.

LIBERUM TENEMENTUM.

DECLARATION in trespass, placing timbers on plaintiff's walls, breaking closets, digging in soil, setting up posts, laying rubbish, and expelling plaintiff from possession of part of the said closets. Two Counts.

And the said defendants, by A. B. their attorney, come and defend the force and injury when, &c. and say, that they are not guilty of the premises above laid to their charge in manner and form as the said plaintiff hath in his said declaration complained against them; and of this they put themselves upon the country, &c.: And the said defendants for further plea in this behalf as to the erecting and setting up the said building and the said beams, rafters, and timbers in the said first Count of the said declaration mentioned, on the two said walls in the said first Count of the said declaration mentioned, and keeping and continuing, and causing to be kept and continued the same so erected and set up, put, and placed on the said walls for the said space of time in the said first Count of the said declaration mentioned by the said defendants, above supposed to be done by leave of, &c. (*actio non*); because

Plea 1st, Not Guilty.

2d Plea, that as to placing the timbers, defendants say, that the walls are the freehold of one A. B. and plaintiff, and they as servants and by the command of A. B. set up the timbers.

TRESPASS.—PLEA—EASEMENTS, &c.

they say, that the said walls in the said first Count of the said declaration mentioned now are, and at the said time when, &c. were the soil and freehold of the said B. C. and of the said plaintiff; wherefore they the said defendants at the same time when, &c. as servants of the said B. C. and by his command, erected and set up the said buildings, and the said beams, rafters, and timbers in the said first Count of the said declaration mentioned, on the said walls in the said first Count of the said declaration mentioned, and kept and continued, and caused to be kept and continued the same so erected and set up, put, and placed on the said walls for the said space of time in the first Count of the said declaration mentioned, as being the walls of the said plaintiff and of the said B. C. as it was lawful for them to do for the cause aforesaid, which is the same erecting and setting up the said building, beams, rafters, and timbers in the said first Count of the said declaration mentioned, on the said wall in the said first Count of the said declaration mentioned, and keeping and continuing, and causing to be kept and continued the same so erected and set up, put, and placed on the said wall for the said space of time in the said first Count of the said declaration mentioned, whereof the said plaintiff hath above complained against them; and this, &c.; wherefore, &c. if, &c.: And the said defendants for further plea in this behalf as to the erecting and setting up, &c. [as before] by the said defendants above supposed to be done by like, &c. (*actio non*); because they say, that the said B. C. at the said time when, &c. was, and long before was, and still is seised in his demesne as of fee of and in a certain ancient messuage or tenement, with the appurtenances, in the parish aforesaid, in the said county, adjoining to the said walls in the said first Count of the said declaration mentioned in which, &c. and that the said B. C. and all those whose estate he now has, and at the said time when, &c. had of and in the said messuage or tenement, with the appurtenances, for the time being, from time whereof the memory of man is not to the contrary, have had the liberty and privilege of laying and putting, and have been used and accustomed to lay and put, and still of right ought to have the liberty and privilege of laying and putting the rafters, beams, and timbers of and belonging to his said messuage and tenement, with the appurtenances, on the said wall in the said first Count of the said declaration mentioned, as an easement to the said ancient messuage or tenement, with the appurtenances, of the said B. C. belonging and appertaining; wherefore the said B. C. in his own right, and the said B. T. and E. as servants to the said B. C. and by his command at the said time when, &c. erected and set up the said beams, rafters, and timbers in the said first Count of the said declaration mentioned (the same then and there being beams, rafters, and timbers of and belonging to his said messuage and tenement, with the appurtenances, and parcel of a certain building part thereof), upon the said walls in the said first Count of the said declaration mentioned, and kept and continued the same so there erected, put up, set up, and placed for the said space of time in the

3d Plea, that A.B. is possessed of a house adjoining to the walls, and that he had a right to place the timbers on the wall as an easement to his house.

the said first Count of the said declaration mentioned, as it was lawful for them to do for the cause aforesaid, which is the same erecting and setting up, and causing, &c. &c. and keeping and continuing, and causing, &c. &c. wherof, &c. &c.; and this, &c.; wherefore, &c. : And for further plea in this behalf as to breaking and entering the said closes in the said last Count of the said declaration mentioned, and with spades, pickaxes, and other iron instruments, digging up, subverting, turning up, and spoiling the soil in the said closes, and putting up, placing, and erecting in and upon the said closes the said posts, pales, and rails in that Count mentioned, and keeping and continuing the same so there put up, placed, and erected for the said space of time in the said last Count of the said declaration mentioned, and putting, laying, casting, and placing on the said closes the said quantities of earth, dirt, soil, filth, and rubbish in that Count mentioned, and keeping and continuing the same so there put, laid, and placed on the said closes in the said last Count of the said declaration mentioned, and expelling the said plaintiff, putting out, and amoving him from the possession and occupation of a great part of the said closes, and keeping and continuing the said plaintiff so expelled, put out, and amoved from the possession and occupation thereof for the said space of time in the said last Count of the said declaration mentioned by the said defendants above supposed to be done, they the said defendants, by like leave, &c. (*ad hoc non*); because they say, that the said closes in the said last Count of the said declaration mentioned are, and at the said time when, &c. were the closes, soil, and freehold of the said B. C. wherefore the said B. C. in his own right, and the said B. T. and E. as servants of the said B. C. and by his command at the said time when, &c. in the said last Count of the said declaration mentioned, broke and entered the said closes in the said last Count of the said declaration mentioned, and with spades, &c. dug, &c. the soil in the said closes, as being the soil of the said B. C. and put up, &c. in and upon the said closes the said posts, &c. in that Count mentioned, and kept and continued the same so there erected, &c. for the said space of time in the said last Count of the said declaration mentioned, as being upon the closes, soil, and freehold of the said B. C. and put up, &c. in and upon the said closes the said quantities of earth, &c. in the said last Count mentioned, and kept and continued the same so put, &c. there for the said space of time in the said last Count of the said declaration mentioned, as being the closes, soil, and freehold of the said B. C. and expelled, &c. the said plaintiff from the possession, &c. of the said closes, and kept and continued the said plaintiff so expelled, &c. from the possession and occupation thereof for the said space of time in the said last Count of the said declaration mentioned, as being the closes, soil, and freehold of the said B. C. as it was lawful for them to do for the cause aforesaid, which is the same breaking, &c. wherof, &c.; and this, &c.; wherefore, &c. if, &c.

4th Plea, as to the breaking the closes, digging, &c. they say, that the close is the freehold of A. B.

F. BULLER.

TRESPASS.—PLEA—TITLE LESS THAN FREEHOLD

TITLE LESS THAN FREEHOLD.

DECLARATION in trespass for entering close, and pulling down hedges, &c.

Plea, that defendant, as tenant from year to year as tenant in fee of a close adjoining locus, has a prescriptive privilege of watering horses, &c. depasturing in his said close in a brook which runs through locus, and of passing with them from his said close over locus to the brook, and so back; and because the way was obstructed by the hedges, removed them.

First, general issue: And for further plea in this behalf as to the breaking and entering the said close in the said first Count of the said declaration mentioned, and with feet in walking treading down, consuming, and spoiling the grafs there then growing, and with the said cattle in the said first Count of the said declaration mentioned, treading down, trampling upon, depasturing, spoiling, and consuming the said other grafs there growing, and cutting down, pulling down, breaking down, prostrating, and destroying the said hedges and fences in the said first Count of the said declaration mentioned, and the said wood, stones, and other materials thereof coming in the said first Count of the said declaration mentioned, taking and carrying away: And also as to the breaking and entering the said close or parcel of ground in the said last Count of the said declaration mentioned, and with his feet in walking treading down, consuming, and spoiling the said grafs there growing, and with the said cattle in the said last Count of the said declaration mentioned, treading down, trampling upon, depasturing, spoiling, and consuming the said other grafs there growing, and cutting down, pulling down, breaking down, prostrating, and destroying the said hedges and fences in the said last Count of the said declaration mentioned, and the wood, stones, and other materials thereof coming in the said last Count of the said declaration mentioned taking and carrying away, above supposed to have been committed by the said Thomas, he the said Thomas, by leave, &c. (*actio non*); because that the said close in the said first Count of the said declaration mentioned, and the said close or parcel of ground in the said last Count of the said declaration mentioned, are one and the same close, and not divers other or different, and that the said hedges and fences, and the wood, stones, and materials in the said first Count of the said declaration mentioned, and the said hedges and fences, and the said wood, stone, and other materials in the said last Count of the said declaration mentioned, are the same hedges and fences, wood, stones, and materials, and that the said close in which, &c. now is, and before and at the time of making the indenture of demise hereinafter mentioned, was part and parcel of the said close called Lodge Meadow: And the said Thomas further shays, that long before any of the said times when, &c. to wit, on the second of February 1771, sir Walter Compton, baronet, deceased, was seised of C. in the said close called Lodge Meadow, whereof, &c. with the appurtenances, in his demesne as of fee; and being so seised thereof, he the said Walter Compton, long before any of the said times when, &c. to wit, by a certain indenture made the same day and year last

EASEMENT—(WATERING CATTLE)—COLOUR GIVEN.

last aforesaid, at the parish aforesaid, in the county aforesaid, between the said sir Walter of the one part, and the said Thomas of the other part (*profert in curia*) for the considerations therein mentioned demised the said close called Lodge Meadow, whereof, &c. (amongst other things) to the said Thomas, to have and to hold to the said Thomas for the term of twenty-eight years from thence next ensuing, and fully to be complete and ended; by virtue of which said demise the said Thomas, long before any of the said times when, &c. to wit, on the same day and year last aforesaid, entered into the said close called Lodge Meadow, whereof, &c. with the appurtenances, and became and was possessed thereof, and remained and continued so possessed until the said John, a little before the said first time when, &c. claiming title to the said close in which, &c. under colour of a certain charter of demise made by the said sir Walter to the said John for the term of his natural life, before the making of the said demise to the said Thomas, whereas in truth nothing passed into the possession of the said John by the said charter entered into the said close in which, &c. upon whose possession thereof the said Thomas, at the said several times when, &c. re-entered, and with his feet in walking trod down, consumed, and spoiled the grass there then growing, as being the grass of the said Thomas growing in his said close so demised to him as aforesaid, and with the said cattle in the said declaration mentioned trod down, trampled upon, depastured, spoiled, and consumed the said grass there then growing, as being the grass of the aforesaid Thomas growing in his aforesaid close; and because the said John, a little before the said first time when, &c. had wrongfully and unlawfully, and without the consent and against the will of the said Thomas, erected and caused to be erected the said hedges and fences in the said declaration mentioned in and upon the said close in which, &c. and thereby very much incumbered, damaged, and spoiled the same, he the said Thomas, at the said several times when, &c. in order to remove the same, cut down, pulled down, broke down, prostrated, and destroyed the said hedges and fences there then erected and being, and took and carried the said wood, stones, and other materials thereof coming, and removed the same to a little distance for the use of the said John, as it was lawful for him to do for the cause aforesaid, doing as little damage on that occasion as he possibly could, which are the same, &c. whereof, &c.; and this, &c.; wherefore, &c. [3^d Plea, that *locus* is part of a close called Lodge Meadow, and is the freehold of Robert Berkley, esquire, and defendant justifies the trespass as his servant, and by his command]: And for further plea in this behalf as to the breaking, &c. by leave, &c. (*adlio non*); because he says, that the said close in the said first Count of the said declaration mentioned, and the said close in the said second Count of the said declaration mentioned, are, and at the said several times when, &c. were one and the same close and not divers or different closes, and the said hedges and fences, and the said wood, stone, and materials in the said first Count of the said declaration

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TRESPASS:—PLEA—EASEMENTS, &c.

mentioned, and the said hedges and fences, and the said wood, stone, and materials in the said last Count of the said declaration mentioned, are the same hedges and fences, stone, wood, and materials, and not other or different: And the said Thomas further says, that long before any of the said times when, &c. to wit, on the first of January 1786, one Robert Berkley, esquire, was and still is seised in his demesne as of fee of and in a certain close called Lodge Meadow, adjoining to the said close in which, &c. and that he the said Robert, and all those whose estate he the said Robert now hath, and at the said several times when, &c. had of and in his said close called Lodge Meadow, with the appurtenances, for the time being, from time whereof the memory of man is not to the contrary, have had, and have used and been accustomed to have, and of right ought to have had, and still of right ought to have for himself and themselves, his and their farmers and tenants, and occupiers of the said close called Lodge Meadow, with the appurtenances, for the time being, the privilege, benefit, and advantage of watering his and their horses, mares, geldings, bulls, cows, and sheep kept and depastured in the said close called Lodge Meadow, at and in a certain brook or rivulet running and flowing into, through, and over the said close in which, &c. and of passing from the said close called Lodge Meadow with his and their said cattle, into, through, and over the said close in which, &c. to the said brook or rivulet, and back again from the said brook or rivulet to the said close called Lodge Meadow, as to the said close called Lodge Meadow belonging and appertaining: And the said Thomas further says, that the said Robert being so seised of the said close, with the appurtenances, as aforesaid, he the said Robert, long before the said several times when, &c. to wit, on the said first of January 1786, at the parish aforesaid, in the county aforesaid, demised the same close, with the appurtenances, to the said Thomas, to have and to hold the same unto the said Thomas for and during and unto the full end and term of one year then next ensuing, and fully to be complete and ended, and so on from year to year for so long as both parties should please; by virtue of which said demise, the said Thomas afterwards, to wit, on the same day and year last aforesaid, entered into and upon the said close called Lodge Meadow, and became and was, and still is possessed thereof, and being so possessed thereof; and because the said John, a little before the said several times when, &c. had wrongfully and injuriously erected and placed, and caused to be erected and placed the said hedges and fences in the said declaration mentioned in and upon the said close in which, &c. and thereby blocked and shut up the passage from the said close of the said Thomas called Lodge Meadow to the said brook or rivulet, whereby the said Thomas was then and there deprived of the said privilege, benefit, and advantage of watering his said cattle by him kept and depastured in the said close called Lodge Meadow in the said brook or rivulet, to the great nuisance of the said Thomas; wherefore the said Thomas, in order to open a convenient and necessary pas-
sage

LICENCE IN LAW (a)—NEW ASSIGNMENT.

sage or way from his said close called Lodge Meadow to the said brook or rivulet for the purpose of watering of his cattle by him kept and depastured in the said close called Lodge Meadow, and in order to abate the said nuisance at the said several times when, &c. entered into the said close in which, &c. and then and there cut down, pulled down, broke down, prostrated, and destroyed a little of the said hedge and fences there then erected and being for the purpose aforesaid, and took and carried the wood, stones, and other materials thereof coming, and removed the same to a little distance for the use of the said John, and then and there led and drove his horses, mares, geldings, bulls, cows, oxen, and sheep kept and depastured in his the said Thomas's close, into, through, and over the said close in which, &c. for the purpose of watering the same in the aforesaid brook or rivulet, and so back again from the said brook or rivulet unto and into the said close of the said Thomas as it was lawful for him to do for the cause aforesaid, and in so doing he the said Thomas necessarily and unavoidably with his feet in walking a little trod down, consumed, and spoiled the grass then growing there, and the said horses, mares, geldings, bulls, cows, oxen, and sheep in passing and repassing for the purposes last aforesaid, necessarily and unavoidably a little trod down and trampled upon the said grass then growing there, and the said horses, mares, geldings, bulls, cows, oxen, and sheep, in passing for the purposes last aforesaid, by stealth and by morsels, and without the licence and against the will of the said Thomas a little eat up and depastured the said other grass there growing there, and the said Thomas necessarily and unavoidably for the purposes last aforesaid cut down, pulled down, broke down, prostrated, and destroyed a little of the said hedges and fences there then erected and being, doing as little damage on that occasion as he possibly could; which are the same, &c.; whereof, &c.; and thus, &c.; wherefore, &c.

FOSTER BOWER.

And the said John, as to the said pleas of the said Thomas by him secondly and thirdly above pleaded as to the several trespasses in the introductory part of those pleas respectively mentioned, saith, that he by reason of any thing by the said Thomas in those pleas respectively above alleged (*preludium*); because he says, that he exhibited his bill, and brought his said action against the said Thomas, for that the said Thomas, at the said several days and times in the said declaration mentioned, with force and arms broke and entered the said closes of the said John in the said declaration mentioned, being parcel of a certain meadow called New or Dock Meadow at the parish of Garway aforesaid, and not any part or parcel of the said closes called Lodge Meadow in the said two last-mentioned pleas respectively mentioned, or either of them, but other and different closes, and at the said times when, &c. were divided and separated from the close called Lodge Meadow, at the parish of Garway aforesaid, then in the possession of the said Tho-

(a) To abate nuisance.

PLEA BY COMMONERS—

mas by the said hedges and fences in the said declaration mentioned, and with his feet in walking trod down, consumed, and spoiled the said grass of the said John then growing there, and with the said cattle trod down, trampled upon, depastured, spoiled, and consumed the said other grass of the said John then growing there, and cut down, pulled down, broke down, prostrated, and destroyed the said hedges and fences of the said John therein erected, standing, and being in his said closes herein above newly assigned, and the said wood, stones, and other materials thereof coming took and carried away, and converted and disposed of the same to his own use, in manner and form as the said John hath above thereof complained against him; and this, &c.; wherefore inasmuch as the said Thomas hath not made any answer to the said trespasses herein above newly assigned, the said John prays judgment and his damages by reason of the committing of those trespasses to be adjudged to him, &c.

Replication to last plea in bar, *de injuria facta*, &c.; and traverse of the prescription of the liberty of watering cattle, &c. New assignment to last plea, that defendant committed the trespasses on other occasions, and for other purposes than those mentioned in the last plea, &c. &c. A. CHAMBERE.

To new assignments not guilty; and issue on the traverse in the replication to last plea.

RIGHT OF COMMON.

SANDERSON
against

— REAY AND ANOTHER.

} DECLARATION for
seizing, taking, and carrying
away flacks, flags, and turfs.

First, General issue: And for further plea in this behalf as to the seizing, taking, and carrying away the said flacks, flags, and turfs in the said declaration first mentioned, and bruising, consuming, and destroying other the flacks, flags, and turfs in the said declaration last-mentioned above supposed to have been done by the said defendants, by leave, &c. (*actio non*); because they say, that W. F. esquire, was and still is seised in his demesne as of fee of and in a certain large common in the parish of H. in the said county, and being so thereof seised, because the said flacks, flags, and turfs in the said declaration mentioned, at the said several times when, &c. were upon the said common or waste, and had been wrongfully and injuriously dug and greaved by the said plaintiff in and from the said common or waste a little before the said times when, &c. the said defendants, as servants of the said W. F. and by his command at the said several times when, &c. did seize, take, and carry away part of the said flacks, flags, and turfs, as it

that A. B. seised of a common, and because the turfs had been wrongfully dug, defendant, as servant of A. B. used them.

COMMON OF TURBARY—PASTURE.

it was lawful for them to do for the cause aforesaid, which are the same, &c.; and this, &c.; wherefore, &c.

GEORGE WOOD.

First Plea, General issue: And for a further plea in this behalf as to the breaking and entering † the said close of the said George called the New Inclosure, in which, &c. and treading down, consuming, and spoiling the grass there growing with their feet in walking, and eating up, depasturing, treading down, consuming, and spoiling other the grass and corn there also growing with the said cattle in the said declaration mentioned, and breaking down, pulling down, throwing down, prostrating, and destroying the said gates, stiles, walls, hedges, fences, pales, posts, and rails in the said declaration mentioned, standing, growing, and being in the said close in which, &c. by the said defendants above supposed to have been done, they the said defendants, by leave of, &c. (*actio non*); because they say, that the said close in which, &c. from time whereof the memory of man is not to the contrary, until the wrongful inclosure thereof hereinafter mentioned, was part and parcel of a certain waste or common called, &c. lying and being within, and parcel of the manor of L. in the said county of York §, of which said manor, with the appurtenances, one F. W. and the reverend J. B. long before the said first time when, &c. and also at the said several times when, &c. were and still are seised in their demesne as of fee; and the said F. W. and J. B. being so seised thereof ||, because certain persons to the said defendants unknown had before the said first time when, &c. wrongfully and injuriously erected and caused to be erected the said gates, stiles, walls, hedges, fences, pales, posts, and rails in and upon the said close (1) in which, &c. so being part or parcel of the said waste or common as aforesaid, and thereby separated and divided, inclosed, and shut up the said close (2) in which, &c. from the residue of the said waste or common; and the said George, at the said several times when, &c. wrongfully and injuriously kept and continued the said gates, stiles, walls, hedges, fences, pales, posts, and rails so there erected, standing, and being in and upon the said close (3) in which, &c. parcel of the said waste or common as aforesaid so separating, dividing, inclosing, and shutting up the said close (4) in which, &c. parcel, &c. from the residue of the said waste or common ‡, the said defendants as the servants of the said F. W. and J. B. and by their command at the said several times when, &c. broke and entered into the said close in which, &c. parcel, &c. as into the close and soil of the said F. W. and J. B. and trod down, consumed, and spoiled the grass and corn there then growing, with their feet in walk-

Plea (to declare) that in trespass for breaking down the grass with horses eating up, &c. and breaking down the gates, &c.; that the locus in quo, before the wrongful inclosure thereof, was parcel of a certain common parcel of the manor of A. of which said manor F. W. and J. B. were seised in their demesne as of fee, and because certain persons unknown had erected the gates upon locus in quo, and there separated and shut up locus in quo from the residue of the said common, and because the plaintiffs kept up the same, the defendants entered as servants of F. W. and J. B. and by their command into locus in quo, and trod down, &c. as being the close of F. W. and J. B.

(1) In 1st Plea to new assignment insert here "above newly assigned and"

(2) In 2d Plea to new assignment as above, &c.

new assignment as above. (3) In 2d Plea to new assignment as above, &c. (4) In 2d Plea to new assignment as above, &c.

ing,

ing, as the grafs and corn of the said F. W. and J. B. then growing in their close and soil, and eat up, depastured, trod down, consumed, and spoiled the said other grafs and corn there then also growing, with the said cattle in the said declaration mentioned, so being the grafs and corn of the said F. W. and J. B. then growing in their said close and soil, and broke down, pulled down, prostrated, and destroyed the said gates, stiles, walls, hedges, fences, pales, posts, and rails in the said declaration mentioned, standing, growing, and being in the said close in which, &c. parcel, &c. as being wrongfully and injuriously erected, standing, and being in the said close and soil of the said F. W. and J. B. as it was lawful for them to do for the cause aforesaid; and this they are ready to verify; wherefore they pray judgment if the said George ought to have or maintain his aforesaid action thereof against them: And for further plea in this behalf as to the breaking and entering [Same as in second plea from ¶ to §]: And the said defendants further say, that the reverend sir William Lowther, baronet, long before the said first time when, &c. and also at the several times when, &c. was and still is seised of and in a certain messuage and

1st Plea.

(5) In 4th Plea
insert "other"

(6) In 4th Plea
"last-mentioned"

(7) "last-mentioned"

(8) "last-mentioned"

(9) "last mentioned"

(10) In 4th Plea,
add "the said"

and so in the second plea for new

assignm^t r^t pst.

(11) "last-mentioned"

(12) "last-mentioned"

(13) "last-mentioned"

(14) In 4th Plea,
instead of *Italic*,

say "A.D. 1782,

(15) "last-mentioned"

divers (5), *to wit, thirty acres of land*, with the appurtenances, situate, lying, and being at Leacroft aforesaid, in the parish of Whithirk, in the county aforesaid, in his demesne as of fee, and that the said sir William, and all those whose estate he now hath, and at the said several (6) times when, &c. had of and in the said messuage *and land*, with the appurtenances, from time whereof the memory of man is not to the contrary, have had and have been used and accustomed to have, and during all the time aforesaid of right ought to have had, and still of right ought to have (7) common of pasture in and upon and throughout the said (8) waste or common called Leacroft, otherwise Whimmon, in which, &c. for all his and their commonable cattle levant and couchant in and upon the said (9) messuage *and* (10) *land* with the appurtenances, every year at all times of the year at his and their free will and pleasure, as to the said *messuage and* (11) *land*, with the appurtenances belonging and appertaining; and the said sir William being so seised thereof afterwards and before the said first time when, &c. to wit, on the first of January 1782, demised the said messuage *and* (12) *land*, with the appurtenances, unto *one* Elizabeth Jordan, *widow*, to have and to hold the same (13) *land, with the appurtenances*, unto the said Elizabeth Jordan, from the second day of February then next, and the said messuage, with the appurtenances, from the first day of May (14) *also then next following* for the term of one year from thence next ensuing, and so from year to year for so long time as the said sir William and Elizabeth Jordan should please; by virtue of which said demise the said Elizabeth Jordan afterwards, and before the said first time when, &c. to wit, on the second day of May, in the year of Our Lord 1782, entered into the said messuage *and* (15) *land*, with the appurtenances, and became and was, and still is thereof possessed; and the said Elizabeth Jordan being so possessed thereof [Same as in second

plea from ¶ to §], infomuch that the said Elizabeth Jordan, without breaking down, throwing down, pulling down, prostrating, and destroying the said gates, stiles, walls, hedges, fences, pales, posts, and rails, and opening the said inclosure, could not at those several times when, &c. put their commonable cattle levant and couchant in and upon the said messuage *and* (16) *land*, with the (16) “last mentioned” appurtenances, into the said close in which, &c. parcel, &c. to feed on the grafs there then growing, and to use and enjoy her said common of pasture there in so ample and beneficial a manner as she then and there ought to have used and enjoyed the same, the said Francis, J. H. and J. J. as the servants of the said Elizabeth Jordan, and by her command at the said several times when, &c. entered into the said (17) close in which, &c. in order to break (17) “last mentioned” down, throw down, pull down, prostrate, and destroy, and did then and there break down, throw down, pull down, prostrate, and destroy the said gates, stiles, hedges, fences, pales, posts, and rails then erected, standing, and being in the said close in which, &c. parcel, &c. in order to open the said inclosure, and did thereby then and there open the said inclosure, and did also then and there put into the said close in which, &c. parcel, &c. the said cattle in the said declaration mentioned, the same being the cattle of the said Elizabeth Jordan levant and couchant in the said messuage *and land*, with the appurtenances, to feed on the grafs there then growing, and to use the said common of pasture there, and in so doing necessarily and unavoidably a little trod down, consumed, and spoiled the grafs and corn there then growing, with their feet in walking, and with the said cattle eat up, depastured, trod down, consumed and spoiled a little other of the grafs and corn there then also growing, as it was lawful for them to do for the cause aforesaid, doing as little damage as they possibly could on that occasion, which are the same breaking and entering the close called the New Inclosure in which, &c. and treading down, consuming, and spoiling the grafs and corn there then growing with their feet in walking, and eating up, depasturing, treading down, consuming, and spoiling the other grafs and corn there also growing with the said cattle in the said declaration mentioned, and breaking down, throwing down, pulling down, prostrating, and destroying the said gates, stiles, walls, hedges, fences, pales, posts, and rails in the said declaration mentioned, standing, growing, and being in the said close in which, &c. whereof the said George hath above complained against the said J. H. Francis, and J. J.; and this, &c.; wherefore, &c.: And for a further plea in this behalf, [Same as third plea, observing what is in the margin, and omitting what is in *Italic*.] W. LAMBE.

And as to the said plea of the said J. H. Francis, and J. J. by them first above pleaded, and whereof they have put themselves upon the country, the said George doth so likewise: And as to the said plea of the said J. H. Francis, and J. J. by them secondly above pleaded in bar, as to breaking and entering the close of the said G. called the New Inclosure in which, &c. and breaking down, consuming, and spoiling the grafs and corn there growing

Replication, 6.
militar to general issue.
Replication 7.
ad Pl. a, de injuriis, and traverser locum 741, being piece of terra non of L.

TRESPASS.—REPLICATION—

with their feet in walking, and eating up, depasturing, treading down, consuming, and spoiling other the grafs and corn there also growing with the said cattle in the said declaration mentioned, and breaking down, throwing down, pulling down, prostrating; and destroying the said gates, stiles, walls, hedges, fences, posts, pales, and rails in the said declaration mentioned standing, growing, and being in the said close in which, &c. by the said J. H. Francis, and J. J. above done, the said George saith, that he by reason of any thing by the said J. H. Francis, and J. J. in that plea above alledged (*precludi non*); because he saith, that the said J. H. Francis, and J. J. at the said several times when, &c. of their own wrong broke and entered the said close of the said George called the New Inclosure in which, &c. and trod down, consumed, and spoiled the said grafs and corn there then growing with their feet in walking, and eat up, depastured, trod down, consumed, and spoiled the said other grafs and corn there then also growing with the said cattle in the said declaration mentioned, and broke down, threw down, pulled down, prostrated, and destroyed the said gates, stiles, walls, hedges, fences, pales, posts, and rails in the said declaration mentioned, then standing, growing, and being in the said close in which, &c. is, or at the said time when, &c. was parcel of the manor of Leacroft, in the said county of York, in manner and form as the said J. H. Francis, and J. J. have in their said second plea above alledged; and this, &c.; wherefore inasmuch as the said J. H. Francis, and J. J. have above acknowledged the committing of the said trespasses, the said George prays judgment and his damages, by him sustained on occasion of the committing thereof, to be adjudged to him, &c. : And as to the said several pleas of the said J. H. Francis, and J. J. by them thirdly and lastly above pleaded in bar as to the said several messuages in the introduction to the said third and last pleas of the said J. H. Francis, and J. J. respectively mentioned, saith, that he ought not by reason of any thing in the same pleas, or either of them, above alledged (*precludi non*); because he saith, that the said close and place in which, &c. is, and on the said several times when, &c. was a certain close called the New Inclosure, situate, lying, and being in and part of the parish of Barwick, in Elmet aforesaid, then and not being within and parcel of the said manor of Leacroft, in the said third and last pleas mentioned, and is and at the said several times when, &c. was another and different close from the said close in the said third and last pleas of the said J. H. Francis, and J. J. mentioned and described; and this, &c.; wherefore inasmuch as the said J. H. Francis, and J. J. have not answered the said trespass by them committed in the said close in which, &c. above newly assigned, the said George prays judgment and his damages, on occasion of the trespass above newly assigned, to be adjudged to him, &c.

Traverse.

Replication to the third and last pleas. New assignment, that *locus in quo* is another and different close from the close mentioned in defendant's plea; and not parcel of the manor.

A. CHAMBRE,

And

And the said J. H. Francis, and J. J. as to the replication of Rejoinder, tak-
the said George by him above made to the said plea of the said ing issue on tra-
J. H. Francis, and J. J. by them secondly above pleaded in bar, verie.
say, as before, that the said close in which, &c. is, and at the said
time when, &c. was parcel of the manor of Leacroft, in the said
county of York, in manner and form as the said J. H. Francis, and
J. J. have in their said second plea above alledged; and of this they
put themselves upon the country, &c. and the said George doth
the like: And as to the several trespasses in the introduction to
the said third and last pleas of the said J. H. Francis, and J. J. re- Plea to new af-
spectively mentioned, and by them above supposed to have been signment; 1st,
committed in the said close above newly assigned, and in which, general issue.
&c. the said J. H. Francis, and J. J. say, that they are not guilt-
ty thereof, in manner and form as the said G. hath above in his said
replication alledged against them; and of this they put themselves
upon the country, &c. and the said George doth the like: And ad, That it is the
for a further plea in this behalf as to the said several trespasses in the same close, and
introduction to the said third and last pleas of the said J. H. Francis, stating the a-
and J. J. respectively mentioned, and by them above supposed to buttals.
have been committed in the said close above newly assigned, and
in which, &c. they the said J. H. Francis, and J. J. by like leave,
&c. say the said George (*alio non*); because they say, that the
said close above newly assigned, and in which, &c. from time
whereof the memory of man is not to the contrary, until the wrong-
ful inclosure thereof hereinafter mentioned, was part and parcel of
a certain waste or common called Leacroft Moor, otherwise Win
Moor, that is to say, of so much thereof as lies on the west-side
of a certain stone or place called Gray Stone, and of a certain
beck called Hirft Beck, and between the same stone or place, and
the said beck, and the said village of Leacroft, in the said coun-
ty of York: And the said J. H. Francis, and J. J. further say,
that the said sir W. Lowther, long before the said first time when,
&c. and also at the said several times when, &c. was and still is
seised of and in a certain messuage and divers, to wit, forty-five acres
of land: [Same as in third plea, observing the marginal notes
which relate to this plea only] which are the same trespasses in
the introduction to the said third and last pleas of the said J. H.
Francis, and J. J. respectively mentioned and above newly assigned,
whereof the said George hath above complained against the said
J. H. Francis, and J. J.; and this, &c.; wherefore, &c.: And
for a further plea in this behalf [Same as second plea to new
assignment]; and the said J. H. Francis, and J. J. say, that
the said sir William Lowther, long before the first time when, &c.
and also at the said several times when, &c. was and still is seised
of and in a certain other messuage: [Same as fourth plea to the
declaration, making the ending the same as to second plea to new
assignment.] W. LAMBE.

TRESPASS.—REPLICATION to NEW ASSIGNMENT.

Replication to
new assignment,
similar to ge-
neral issue.

And as to the said plea of the said J. H. Francis, and J. J. by them above pleaded by way of rejoinder to the replication of the said George by him above made to the plea of the said J. H. Francis, and J. J. by them secondly above pleaded in bar, and whereof they have put themselves upon the country, &c. the said George doth so likewise: And as to the said plea of the said J. H. Francis, and J. J. by them first above pleaded in bar, as to the said several trespasses in the introduction to the said third and fourth pleas of the said J. H. Francis, and J. J. respectively mentioned, and by them above committed in the said close above newly assigned, and which, &c. and whereof they have above put themselves upon the country, the said George doth so likewise, &c.: And the said George, as to the said plea of the said J. H. Francis, and J. J. by them secondly above pleaded in bar, as to the said several trespasses in the introduction to the said third and last pleas of the said J. H. Francis, and J. J. respectively mentioned, and by them above committed in the said close above newly assigned, and in which, &c. says, that he the said George, by reason of any thing by them in that plea above alleged (*percludi non*); because protesting that the said close above newly assigned, and in which, &c. was not at the said several times when, &c. or any of the n, wrongfully and injuriously separated, divided, inclosed, or shut up from the residue of the said part of the said Walton's Common, in the said plea mentioned, in manner and form as the said J. H. Francis, and J. J. have above in that plea supposed, the said George, for a replication in this behalf, saith, that the said J. H. Francis, and J. J. at the said several times when, &c. of their own wrong broke and entered the said close above newly assigned, in which, &c. and trod down, consumed, and spoiled the said grais and corn there then growing, with their feet in walking, and eat up, depastured, trod down, consumed, and spoiled the said other grais and corn there then also growing with the said cattle in the said declaration mentioned, and broke down, threw down, pulled down, prostrated, and destroyed the said gate, stiles, walls, hedges, fences, pales, posts, and rails in the said declaration mentioned, then standing, growing, and being in the said close above newly assigned, and in which, &c.; without this, that the sir William Lowther, and all those whose estates he now has, and at the said several times when, &c. had of and in the said messuage *and land*, with the appurtenances, in that plea mentioned, from time whereof the memory of man is not to the contrary, have had, and have been used and accustomed to have, and during all the time aforesaid ought to have had, and still of right ought to have common of pasture in, upon, and throughout the said part of the said waste or common called Leacroft Moor, otherwise Winmoor, in the said last-mentioned plea mentioned, for his and their commonable cattle levant and couchant in and upon the said messuage *and land*, with the appurtenances, every year at all times of the year at his and their free will and pleasure as to the said last-mentioned messuage *and land*, with the appurtenances, belonging and appertaining, in manner and form as the said

Traverse.

In replication to
3d Plea to new
assignment onat
the Italic,

said J. H. Francis, and J. J. have in that plea abovealleged; and this, &c.; therefore inasmuch as the said J. H. Francis, and J. J. have above acknowledged the committing of those trespasses in the said close above newly assigned, in which, &c. the said George prays judgment and his damages by him sustained on the occasion of the committing thereof to be adjudged to him, &c.: And the said George, as to the said plea of the said J. H. Francis, and J. J. by them lastly above pleaded [Same as replication to second plea to new assignment.]

A. CHAMBRE.

And the said J. H. Francis, and J. J. as to the said replica-
tion of the said George by him above made to their said plea by
them secondly above pleaded in bar as to the said several trespasses
in the introduction to their third and last pleas respectively men-
tioned, and by them above supposed to have been committed in the
said close above newly assigned, and in which, &c. say, as before,
that the said sir William Lowther, and all those whose estates
he now has, and at the said several times when, &c. of and in the
messuage *and land*, with the appurtenances, in the plea, and from
time whereof, &c. &c. have had, and have been used and accus-
tomed to have, and during all the time aforesaid of right ought to
have had, and still of right ought to have common of pasture in,
upon, and throughout the said part of the said waste or common
called Leacroft Moor, otherwise Winmoor, in the said last-men-
tioned plea mentioned, for all his and their commonable cattle le-
vant and couchant in and upon the said messuage *and land*, with
the appurtenances, every year at all times of the year at his and
their free will and pleasure as to the said last-mentioned messuage
land, with the appurtenances, belonging and appertaining, in man-
ner and form as the said J. H. Francis, and J. J. have in that plea
above alleged; and of this they put themselves upon the coun-
try, &c. and the said G. doth the like: And the said J. H. Fran-
cis, and J. J. [Same as rejoinder to second-plea to new assign-
ment]; therefore, &c.

Rejoinder.

In rejoinder to
replication to 3d
plea to new as-
signment, omit
the Italic.

W. LAMBE.

Afterwards, to wit, on the day and place within mentioned, be-
fore the honourable Francis Buller, esquire, one of the justices of
our lord the king assigned to hold pleas before the king himself, and
the honourable John Heath, esquire, one of the justices of the said
lord the king of the bench at Westminster, justices of the lord
the king assigned to hold the assizes in and for the said county of
York, according to the form of the statute in that case made and
provided, come as well the within-named George Booth as the
within-named James Hebden, Francis Bearcroft, and J. Jordan,
by their attorneys within-mentioned, and the jurors of the jury,
whereof mention is within made being summoned, some of them
to wit, [here name the jurors who did appear] come, and because

Postea thereon,
finding for the
plaintiff as to the
first issue.

the residue of the jurors of the same jury do not appear, therefore fix other persons of the by-standers being by the sheriff within named and appointed at the request of the said George, and by the command of the said justices are now newly sit down, whose names are added to the within-written pannel, according to the form of the statute in such case made and provided, and which said jurors so newly set down, to wit, [here name the jurors being required] come likewise, and together with the said other jurors before impannelled, being called and sworn to try the truth of issues within contained, say upon their oath as to the first issue within joined between the said parties, that the said defendants are guilty of the said trespass in the declaration within laid to their charge, in manner and form as the said George hath within thereof complained against them: And to the second issue within joined between the said parties, that the said close in which, &c. is not, nor at the said time when, &c. was parcel of the manor of Leacroft, in the said county of York, in manner and form as the said defendants here in their said second plea within alledged: And as to the third issue within joined between the said parties, that the said defendants are not guilty of the said trespasses within newly assigned, in manner and form as the said George hath in his replication alledged against them: And as to the said issue fourthly within joined, the jurors aforesaid, upon their oath aforesaid, say, that the said sir W. Lowther, and all those whose estate he now has, and at the several times when, &c. had of and in a messuage and land, with the appurtenances, in the said plea of the said defendants by them secondly above pleaded in bar as to the said several trespasses in the introduction of their said third and last pleas respectively mentioned, and by them within supposed to have been committed in the said close within newly assigned, and in which, &c. from time whereof the memory of man is not to the contrary, have had, and have been used and accustomed to have, and during all the time aforesaid of right ought to have had, and still of right ought to have right of common of pasture in, upon, over, and throughout the said part of the said waste or common called L. Moor, otherwise Winmoor, in the said last-mentioned plea mentioned, for all his and their commonable cattle levant and couchant in and upon the said messuage and land, with the appurtenances, every year, at all times of the year, at his and their free will and pleasure as to the said last-mentioned messuage and land, with the appurtenances belonging and appertaining, in manner and form as the said defendant here in that plea within alledged: And as to the issue lastly within joined, that the said sir W. Lowther, and all those whose estates he now has, and at the said several times when, &c. had of and in the said messuage in the said plea by them lastly above pleaded in bar, as to the said several trespasses in the introduction to their third and last pleas respectively mentioned, and by them within supposed to have been committed in the said close within newly assigned, and in which, &c. mentioned, with the appurtenances, from time whereof the memory of man is not to the contrary, have had, and have been used and

As to 2d issue, that the *locus* is not parcel of the manor, as alledged by defendants in 2d plea.

As to 3d issue, defendants are not guilty.

As to 4th issue, that the freeholder has right of common in *locus in quo* in right of his messuage and land.

As to 5th issue, same in right of the messuage only.

accustomed to have, and during all that time aforesaid of right ought to have had, and still of right ought to have common of pasture in, upon, and throughout the said part of the said waste or common called Leacroft Moor, otherwise Winmoor, in the said last-mentioned plea mentioned, before and until the inclosure thereof in the same plea mentioned, for all his and their commonable cattle levant and couchant in and upon the said last-mentioned messuage, with the appurtenances, every year at all times of the year at his and their free will and pleasure, as to the said last-mentioned messuage, with the appurtenances belonging and appertaining, in manner and form as the said defendants have in the same plea within alledged; therefore, &c.

Drawn by MR. J. GRAHAM.

AND the said Richard and Daniel, by William Lyon their attorney, come and defend the force and injury, when, &c. and say, that they are not guilty of the trespasses above laid to their charge, in manner and form as the said James hath above thereof complained against them; and of this they put themselves upon the country: And for further plea in this behalf, as to the breaking and entering the said close of the said James in the said declaration mentioned, and pulling down, throwing down, prostrating, breaking to pieces, and destroying the mounds, fences, and pales of the said James in the said declaration mentioned, and with feet in walking treading down, spoiling, and consuming the grafs of the said James there then growing, and with the said cattle in the said declaration mentioned eating up, treading down, spoiling, and consuming other the grafs of the said James there then growing in the said declaration mentioned above supposed to have been done by the said Richard, he the said Richard, by leave of the court, &c. &c. says that the said James (*actio non*); because he says, that the said close in which, &c. in the said declaration mentioned is, and at the said time when, &c. was, and from time whereof the memory, &c. &c. hath been part and parcel of a certain waste or common called Wealed Common, otherwise Harrow Weeled Common, being the same waste in the said declaration mentioned, situate and being within the said manor of Harrow, otherwise Sudbury, in the said county of Middlesex; and that he the said R. long before and at the said time when, &c. and continually from thenceforth hitherto hath been, and still is seised in his demesne as of fee of and in divers, to wit, one thousand acres of land, within the said manor of Harrow, otherwise Sudbury, in the said county of Middlesex; and that the said R. and all those whose estate he the said R. now hath, and at the said time when, &c. had of and in the said lands, with the appurtenances, from time whereof, &c. until the time of the inclosure hereinafter next mentioned, have had and have used, and been accustomed to have and use, and of right during all the time aforesaid ought to have had and used for himself and themselves, his and their farmers and tenants; occupiers of the same land, with the appurtenances, common of pasture in, upon, whereof, &c.

Plea (to a declaration for entering plaintiff's close, pulling down fences, treading down grafs with feet, and consuming same with cattle, and tearing up the soil with waggon), justifying putting his cattle into *locus in quo* as tenant in fee of 1000 acres of land, in right of which he is entitled to common over *locus in quo* for all cattle levant and couchant, and because the fences were wrongfully erected justifies removing them. *Locus* part of a waste in the manor of Harrow. Defendant seised in fee of 1000 acres of land within the manor. Prescription for common of pasture for all cattle levant and couchant on the said 1000 acres over said waste, upon, whereof, &c.

upon, or throughout the same waste or common called Weeled Common, otherwise Harrow Weeled Common, whereof the said close in which, &c. at the said time when, &c. was, and from time whereof, &c. hath been, and is part and parcel for all his and their commonable cattle levant and couchant in and upon the said land of the said R. with the appurtenances, in each and every year at all times of the year at his and their free will and pleasure, as to the same land, with the appurtenances, belonging and appertaining; and the said R. being so seised of the said land, with the ap-

Because plaintiff
had wrongfully
erected fences
upon locus.

purtenances, because the said James, before the said time when, &c. had wrongfully and injuriously made and erected; and caused and procured to be made and erected the said mounds, fences, and pales in the said declaration mentioned in and upon the said close in which, &c. so being part and parcel of the said waste or common as aforesaid, and had thereby surrounded, fenced, inclosed, and shut up the said close in which, &c. parcel, &c. from the said common or waste whereof, &c. and which said mounds, fences, and pales at the said time when, &c. wrongfully and injuriously were, and continued so there erected, standing, and being in and upon the said close in which, &c. parcel, &c. and so mounding fencing, inclosing, and shutting up the said close in which, &c. parcel, &c. from the said waste or common whereof, &c. inso-
much that the said Richard, without pulling down, throwing down, prostrating, breaking to pieces, and destroying the said mounds, fences, and pales, and opening the said inclosure, could not at the said time when, &c. put his commonable cattle levant and couchant in and upon the said lands of him the said R. with the appurtenances, into the said close in which, &c. so being parcel of the said waste or common aforesaid, to feed and depasture on the grass there then growing, and use his said common of pasture there, nor could use or enjoy his said common of pasture therein in so ample and beneficial a manner as he then and there

Defendant entered and removed nuisance.

of right ought to have had, used, and enjoyed the same, he the said R. in his own right, at the said time when, &c. entered the said close in which, &c. parcel, &c. to pull down, throw down, prostrate, break to pieces, and destroy the said mounds, fences, and pales in the said declaration mentioned, then erected, standing, and being in and upon the said close in which, &c. in the said declaration mentioned, in order to open the said inclosure, as it was necessary for him to do for that purpose, and as he lawfully might for the cause aforesaid, and did then and there, upon the occasion, pull down, throw down, prostrate, break to pieces, and destroy the said mounds, fences, and pales, and did then and there open the said inclosure for the purpose aforesaid, and did then and there drive and put the said cattle in the said declaration mentioned, the same being the commonable cattle of him the said R. and levant and couchant in and upon the said *lands of the said R. with the appurtenances*, into the close in which, &c. parcel, &c. to feed and depasture upon the said grass there then growing, and to use his said common of pasture there, as he lawfully might for the

the cause aforesaid, and in so doing he the said R. necessarily and unavoidably pulled down, threw down, prostrated, and broke to pieces and destroyed the said mounds, fences, and pales in the said declaration mentioned, and with his feet in walking trod down, spoiled, and consumed the grass there then growing in the said close in which, &c. parcel, &c. which is the same trespass in the introduction to this plea mentioned, whereof the said James hath above complained against the said R. ; and this, &c. ; wherefore, &c. : And for further plea in this behalf as to the breaking and entering, &c. § [As before in the 2d plea] above supposed to have been done by the said R. he the said R. by like leave, &c. says that the said James (*ad hoc non*) ; because he says, that the said close in which, &c. in the said declaration mentioned is, and at the said time when, &c. was, and from time whereof, &c. hath been part and parcel of a certain waste or common called Weeled Common, otherwise Harrow Weeled Common, being the same waste in the said declaration mentioned, situate and being within the said manor of Harrow, otherwise Sudbury, in the said county of Middlesex, and that as well the said waste or common whereof, &c. as divers, to wit, five messuages and two hundred acres of land, with the appurtenances, now are, and at the said time when, &c. so were, and from time whereof, &c. have been situate and lying within, and part and parcel of the said manor of Harrow, otherwise Sudbury, in the said county, and that the said messuages and lands last-mentioned now are, and during all the time aforesaid have been customary tenements of the said manor, and demised and demiseable by copy of the court roll of the said manor, by the lord of the said manor or by his steward of the court of the said manor for the time being, by the rod to any persons or person willing to take the same in fee simple at the will of the lord, according to the custom of the said manor, and that long before the said time when, &c. to wit, on the third day of May 1772, and long before, one sir John Rushout, baronet, was seised of the said manor of H. otherwise S. with the appurtenances, whereof, &c. in his demesne as of fee ; and being so seised thereof he the said sir J. R. afterwards. and long before the said time when, &c. to wit, at a court baron of him the said sir J. R. then holden in and for the said manor, on the said third day of May 1772, before Elifina Biscoe, esquire, then his steward of the courts of the said manor, by copy of the court rolls of the said manor, and by the rod did grant the said messuages and lands last-mentioned, with the appurtenances, parcel, &c. unto the said Richard, to hold the same unto the said Richard, his heirs and assigns, at the will of the lord, according to the custom of the said manor ; by virtue of which said grant he the said R. afterwards, and long before the said time when, &c. to wit, on the same day and year last aforesaid, entered into the said messuages and land last-mentioned, with the appurtenances, parcel, &c. and because, &c. and was, and continually from thenceforth hitherto hath been, and still is seised thereof in his demesne as of fee at the will of the lord, according

3d Plea.

locus part of waste called H. W. Common, situate within the manor of Harrow.

And that as well said waste as 3 messuages and 200 acres of land are situate within, &c. parcel of the manor.

Said messuages and land are customary tenements, and demiseable, &c.

Sir J. Rushout, bart. seised of the manor in his demesne as of fee.

Grant from the lord to the defendant of said messuages and land.

Defendant entered.

PLEA—JUSTIFICATION—(TO DIG SAND)—

Custom within the manor for all tenants of said customary tenements to have common of pasture over said waste whereof, &c.

according to the custom of the said manor : * And the said R. further says, that within the said manor whereof, &c. there now is, and from time whereof, &c. there hath been a certain ancient and laudable custom there used and approved of, that is to say, that every customary tenant of the said customary tenements, with the appurtenances, parcel, &c. for the time being, from time whereof, &c. until the time of the inclosure hereinafter mentioned, have

had and used, and been accustomed to have and use, and of right during all the time aforesaid hitherto ought to have had and used, and still of right ought to have and use for himself and themselves, his and their farmers and tenants, occupiers of the same customary tenements, with the appurtenances, parcel, &c. common of pasture in, upon, and throughout the said waste or common called Weeled Common, otherwise Harrow Weeled Common, whereof, &c. for all his and their commonable cattle levant and couchant in and upon the said messuages last-mentioned, with the appurtenances, parcel, &c. in each and every year at all times of the year at his and their free will and pleasure, as to the said messuages and lands last-mentioned, with the appurtenances, parcel, &c. belonging and appertaining ; † and the said R. being so seised of the said messuages and lands last-mentioned with the appurtenances, parcel, &c. because [Same as in the second plea to the end, omitting the words in *Italic*, and inserting in their stead the words “ messuages and lands last-mentioned, with the appurtenances, parcel, &c.”] : And for further plea in this behalf as to the breaking and entering the said close of the said James in the said declaration mentioned, and pulling down, throwing down, prostrating, breaking to pieces, and destroying the said mounds, fences, and pales, to wit, four yards of the said mounds, four yards of the said fences, and four yards of the said pales, part of the said mounds, fences, and pales of the said James in the said declaration mentioned, and with his feet in walking [As before in second plea], above supposed to have been done by the said R. he the said R. by like leave, &c. says, that the said James (*actio non*) ; because he says, that the said close in which, &c. in the said declaration mentioned is, and at the said time when, &c. was, and from time whereof, &c. hath been part and parcel of a certain waste or common called Weeled Common, otherwise Harrow Weeled Common, being the said waste in the said declaration mentioned, situate and being in the same manor of Harrow, otherwise Sudbury, in the said county of Middlesex, and that the said R. long before and at the said time when, &c. and continually from thenceforth hitherto hath been and still is seised in his demesne as of fee of and in divers, to wit, ten messuages and one thousand acres of land, with the appurtenances, situate and being within the said manor of Harrow, otherwise Sudbury, in the said county of Middlesex ; and that the said R. and all those whose estates he the said R.

And because, &c.

4th Plea.

Locus as before.

Defendant seised of 10 messuages and 1000 acres of land.

Prescription to dig sand and gravel in said waste whereof, &c. for repairing the walks in the gardens, &c. of said messuages, and repairing the ways upon said last-mentioned land.

now hath, and at the said time when, &c. had of and in the said last-mentioned messuages and lands, with the appurtenances, from time whereof, &c. until the time of the inclosure hereinafter mentioned, have dug and taken, and have used and been accustomed to dig and take, and during all the time aforesaid hitherto ought to have dug and taken, and still of right ought to dig and take, for himself and themselves, his and their tenants, occupiers of the said last-mentioned messuages and land with the appurtenances, sand and gravel in, upon, and throughout the said waste or common whereof, &c. for the necessary repairing and amending of the ways, paths, and walks of and in the gardens, orchards, and yards of and belonging to the said last-mentioned messuages, with the appurtenances, and the necessary repairing and amending of the ways in, upon and belonging, and appertaining to the said last-mentioned land, with the appurtenances, every year at all times of the year as often as need or occasion hath required, as to the said messuages and lands last-mentioned, with the appurtenances belonging and appertaining : § And the said R. further says, that the said R. being so seised of and in the said messuages and land last-mentioned, with the appurtenances, before and at the said time when, &c. certain ways, paths, and walks of and in certain gardens, orchards, and yards of and belonging to the said last-mentioned messuages, with the appurtenances, were in decay and out of repair for want of necessary and needful repairing and amending of the same, and certain ways in, upon and belonging, and appertaining to the said last-mentioned lands were foundrous, impassable, and out of repair for the want of repairing and amending of the same : And the said R. further says, that the said James before the said time when, &c. had wrongfully and injuriously made and erected, and caused and procured to be made and erected the said mounds, fences, and pales in the said declaration mentioned in and upon the said close in which, &c. so being part and parcel of the said waste or common as aforesaid, and had thereby mounded, fenced, inclosed, and shut up the said close in which, &c. parcel, &c. from the said common or waste whereof, &c. and which said mounds, fences, and pales were and continued so there erected, standing, and being in and upon the said close in which, &c. parcel, &c. and so mounding, fencing, and inclosing, and shutting up the said close in which, &c. parcel, &c. from the said waste or common, whereof, &c. inasmuch that the said R. without pulling down, throwing down, prostrating, breaking to pieces, and destroying part of the said mounds, fences, and pales, and opening the said inclosure, could not at the said time when, &c. enter into and upon the said close in which, &c. for the purpose of digging, taking, leading, and carrying away sand and gravel, then being in and upon the said close in which, &c. parcel, &c. for the repairing and amending the said ways, paths, and walks so in decay, foundrous, impassable, and out of repair as aforesaid, nor could the said R. use and enjoy his said liberty and privilege of digging and taking sand and gravel as aforesaid in so ample and beneficial a manner

Walks and ways
out of repair.

And because
plaintiff had
wrongfully erected
fences, &c.

TRESPASS.—PLEA.—JUSTIFICATION.—

Defendant justifies pulling them down.

manner as he then and there of right ought to have had, used, and enjoyed the same; wherefore he the said R. in his own right, at the said time when, &c. entered into the said close in which, &c. to pull down, throw down, prostrate, break to pieces, and destroy a part of the said mounds, fences, and pales in the said declaration mentioned, then erected, standing, and being in and upon the said close in which, &c. in the said declaration mentioned, parcel, &c. in order to open the said inclosure and there dig for, take, and carry away sand and gravel for the purposes aforesaid; and to admit and have ingress, regress, and egress for carts, waggons, and other carriages in the said declaration mentioned, and the said horses, mares, and geldings in the said declaration mentioned, then and there harnessed to the said carts, waggons, and other carriages of him the said R. in the said declaration mentioned, and drawing the same as it was necessary for him to do for the cause aforesaid, and did then and there upon that occasion pull down, throw down, prostrate, break to pieces, and destroy two yards of the mounds, four yards of the fences, and four yards of the pales

And took sand and gravel, &c.

of the said inclosure, did then and there open the said close in which, &c. parcel, &c. for the purposes last aforesaid, and did then and there dig for and take a reasonable quantity of sand and gravel, then being in and upon the said close in which, &c. parcel, &c. for the purposes last aforesaid, and with the said carts, waggons, and other carriages, and with the said horses, mares, and geldings thereto harnessed, and drawing the same in the said declaration mentioned, did then and there take, load, and carry away the same quantity of sand and gravel from and out of the said close in which &c. unto the said messuages and lands last-mentioned of him the said R. for the purpose last aforesaid, and then and there used and applied the said sand and gravel so dug, and taken, and led, and carried away as aforesaid, in and about the necessary repairing and amending of the said ways, paths, and walks, being so in decay, foundrous, impassable, and out of repair as aforesaid, as it was lawful for him the said R. to do for the cause aforesaid; and in so doing the said R. necessarily and unavoidably a little pulled down, threw down, prostrated, broke to pieces, and destroyed the said part of the said mounds, fences, and pales in the said declaration mentioned, and with his feet in walking, and with the said cattle in the said declaration mentioned, a little trod down, spoiled, and consumed a little of the grass there then growing on the said close in which, &c. parcel, &c. and the said cattle in the said declaration mentioned, in passing and repassing in and along the said close in which, &c. parcel, &c. for the purpose aforesaid, did snatch and eat up a little of the grass there then growing by stealth and morsels, and against the will of the said R. and with the wheels of the said carts, waggons, and other carriages of the said R. did then and there subvert, turn up, and spoil a little of the soil in the said close in which, &c. parcel, &c. doing as little damage on that occasion as he possibly could, which is the same trespass in the introduction to this plea mentioned, whereof the said James hath

above

above thereof complained against him; and this, &c.; wherefore, &c.: And for further plea in this behalf as to the breaking and entering [as above in 4th plea], above supposed to have been done by the said R. the said R. by like leave, &c. says, that the said James (*actio non*); because he says that the said close in which, &c. in the said declaration mentioned is, and at the said time when, &c. was, and from time whereof, &c. hath been part and parcel of a certain waste or common called W. Common, otherwise H. W. Common, being the same waste in the said declaration mentioned, situate and being within the same manor of H. otherwise S. in the said county of Middlesex, and that as well as the said common or waste whereof, &c. as divers, to wit, five other messuages and two hundred acres of land, with the appurtenances, now are, and at the said time when, &c. were, and from time whereof, &c. have been situate, lying, and being within and part and parcel of the said manor of H. otherwise S. in the said county [Same as in third plea from this mark ¶ to this *]: And the said R. further says, that within the said manor whereof, &c. there now is, and from time whereof, &c. there hath been a certain ancient and laudable custom there used and approved of, that is to say, that every customary tenant of the said customary tenements last-mentioned, with the appurtenances, parcel, &c. for the time being, from time whereof, &c. until the time of the inclosure hereinafter mentioned, have dug, and taken, and used, and been accustomed to dig and take, and during all the time aforesaid thereto of right ought to have dug and taken, and still of right ought to dig and take for himself and themselves, his and their farmers and tenants, occupiers of the said last-mentioned messuages and land, with the appurtenances, parcel, &c. sand and gravel in, upon, and throughout the said waste or common, parcel, &c. whereof, &c. for the necessary repairing and amending of the ways, paths, and walks of and in the gardens, orchards, and yards of and belonging to the said last mentioned messuages, with the appurtenances, parcel, &c. and for the necessary repairing and amending in and upon, and belonging and appertaining to the said last mentioned lands with the appurtenances, parcel, &c. every year, at all times of the year, or as occasion hath required, as to the said messuages and land last mentioned with the appurtenances belonging and appertaining, [Same as in fourth plea from § to the end]: And for further, &c. by Daniel Dancer, who justifies in right of ten acres of land of which he is seised in fee for common of pasture, [the same as second plea by defendant Page]: And for further, &c. by defendant Dancer, who justifies in right of copyhold estate for common of pasture, [Same as third plea of defendant Page]: And for further, &c. by defendant Dancer, who justifies in right of ten acres of land whereof he is seised in fee for a right to dig and take sand and gravel, [Same as fourth plea by defendant Page]: And for further, &c. by defendant Dancer, who justifies in right of copyhold land for a right to dig and take sand and gravel, [As in fifth plea by defendant Page]: And for further plea in this behalf, as to the breaking and entering, [Same as in

5th plea, *locus*
as before.

And as well the
common as said
parcel of the
manor, and
grant thereof to
defendant.

Custom within
the manor to
dig sand and
gravel, &c.

Like pleas by the
other defendant,
Daniel Dancer.

10th Plea, by
Page, stating a
right of common
third as in 3d plea.

Custom within the manor that if any person has been desirous to inclose any part of the wastes of the manor, he hath repaired to the homage of the court baron ;

and hath desired (first obtaining the lord's licence) that his desire might be presented ; and if the homage thought it no prejudice to any tenant,

they have been used to present, that such person might inclose, &c.

Fine set.

third plea from § to ‡ : And the said Richard further says, that within the said manor whereof, &c. there now is, and from time whereof, &c. there hath been a certain ancient and laudable custom there used and approved of, that is to say, if any person or persons during all the time aforesaid have or hath been desirous to improve or inclose any part of the waste of the said manor of H. otherwise S. with the appurtenances, whereof such person or persons so desirous to improve and inclose as aforesaid, during all the time aforesaid, have or hath repaired to the homage of the court baron of the said manor, at a general court of the same court baron, holden in and for the said manor according to the custom of the said manor from time immemorial used and approved of within the said manor, and such person or persons have or hath, during all the time aforesaid, at such general court desired that such his, her, or their desire to improve or inclose any part of the wastes of the said manor, first obtaining the consent and licence of the lord of the said manor whereof, &c. for the time being, so to improve or inclose, might be presented by the homage of the said court baron of the said manor at such general court holden in and for the said manor, and that if the said homage of the court baron of the said manor, at such general court so holden as aforesaid, have during all the time aforesaid thought in their conscience that the said intended inclosure was of no prejudice to any tenant or tenants of the said manor, and that the same in right be granted, that then the said homage of the said court baron of the said manor, at such general court so holden as aforesaid, have during all the time aforesaid presented, and have used and been accustomed to present, and of right, during all the time aforesaid, ought to have presented, and still of right ought to present at the said general court so holden as aforesaid, that such person or persons so desiring the said inclosure (first obtaining the leave and licence of the lord of the said manor for the time being), might and may inclose the same ; and after making such presentment as aforesaid, the said presentment so made hath been publicly read at such general court so holden as aforesaid, and if no tenant or tenants then and there present at such general court so holden as aforesaid have or hath, upon the reading of the said presentment, forbid the inclosing of the said part of the said waste so intended to be inclosed as aforesaid, that then the steward for the time being of the said court baron of the said manor, at such general court so holden as aforesaid, hath set a fine and rent, and hath been used and been accustomed to set a fine and rent upon such person or persons so desiring to inclose the said part of the said waste as aforesaid, for and in respect of the said part of the said waste so intended to be inclosed as aforesaid, and hath, during the time aforesaid, granted and hath used, and been accustomed to grant the same part of the waste so intended to be inclosed as aforesaid to such person or persons so desiring the same to be inclosed as aforesaid, to no other person by a coppice, according to the custom of the said manor ; and it hath not been lawful, for and during all the time aforesaid,

for

for any tenant or tenants of the said manor for any time after to forbid or otherwise hinder the said inclosure so intended to be made, and made in pursuance of the custom as aforesaid, or otherwise to disturb the said person or persons, or his or their heirs or assigns, or his or their tenant or tenants thereof, in the quiet enjoying of the said waste ground so inclosed as aforesaid in pursuance of such custom as aforesaid: And the said R. further says, that the said close in which, &c. now is, and from time whereof, &c. hath been part and parcel of the wastes of the said manor, and the homage of the said court baron of the said manor, at such general court so holden as aforesaid according to the custom of the said manor, have not as yet presented at such general court so holden as aforesaid, or any other court heretofore holden in and for the said manor, that any person or persons whomsoever desiring to inclose the said close in which, &c. being part and parcel of the said waste of the said manor, might inclose the same: And the said R. further says, that he the said R. being so seised of the said messuages and land last-mentioned, with the appurtenances, parcel, &c. ; * because, [Same as in second plea from † to the end]: And for further, &c. by defendant Page, who justifies as a copyholder for a right to dig sand and gravel for the repairs of ways, &c. [As before in fifth plea to ||] and then stating the custom, that no tenant or other person should inclose without the consent of the lord the homage of the court baron of the manor, [As in tenth plea from * to §; and then the conclusion as in fourth plea from § to the end]: And for further, &c. by Dancer, who justifies as a copyholder for common of pasture, and stating the custom that no tenant or person should inclose, &c. [As in tenth plea by Page]: And for further, &c. [Same by Dancer as eleventh plea by Page].

Locus part of the waste.

No presentment has ever been made, &c.

THOMAS WALKER.

And the said James, as to the said plea of the said R. and D. by them first above pleaded, and whereof they have above put themselves upon the country, &c. doth so likewise: And the said James as to the said plea of the said Richard, by him secondly above pleaded in bar, as to the breaking and entering the said close of the said James in the said declaration mentioned, in which, &c. pulling down, throwing down, prostrating, breaking to pieces, and destroying the mounds, fences, and pales of the said J. in the said declaration mentioned, and with feet in walking treading down, spoiling, and consuming the said grass of the said James there then growing, and with the said cattle in the said declaration mentioned, eating up, treading down, spoiling, and consuming other the grass of the said J. there then growing in the said declaration mentioned, above alledged to have been done by the said Richard, saith, that he by reason of any thing by the said R. above in that plea alledged (*precludi non*); because he saith, that the said close in which, &c. at the said time when, &c. was fourteen acres of land, inclosed in manner and form hereinafter mentioned from the said waste or common called Weeld Common, otherwise

Replication to 2d plea.

That locus was 14 acres of land, inclosed as hereinafter mentioned.

Other wastes within the manor contiguous the one to the other.

Defendant has same right of common over them as over the other.

Admits the common of pasture.

Sir J. R. seized of the manor, whereof, &c. in his demesne as of fee.

Sir J. inclosed lands, &c.

(1) "messuages and lands,"

otherwise H. W. Common, lying and being within the manor of H. otherwise S. in the said county of Middlesex, within which said manor of H. otherwise S. there now are, and at the said time when; &c. were, and from time whereof, &c. have been divers other wastes or commons lying contiguous the one to the other and parcel of the same manor, with the appurtenances, containing together with the said W. Common, otherwise H. W. Common whercof, &c. divers, to wit, fourteen hundred and ten acres on which said open wastes and commons the said R. before and at the said time when, &c. had such and the same right of common as in and upon the said waste or common called W. Common, otherwise H. W. Common; and the said James further says, that true it is that the said Richard and all those whose estates he the said Richard now hath, and at the said time when, &c. had of and in the said land, with the appurtenances, from time whereof, &c. until the time of the inclosure hereinafter next mentioned, have had and have been used, and been accustomed to have and use, and of right during all the time aforesaid ought to have had and used for himself and themselves, his and their farmers and tenants, occupiers of the same land, with the appurtenances, common of pasture in, upon, and throughout the said waste or common called W. Common, otherwise H. W. Common, whereof the said close in which, &c. until the time of the inclosure, hereinafter mentioned, was, and from time whereof, &c. hath been part and parcel for all his and their commonable cattle levant and couchant in and upon the said land of the said R. with the appurtenances, in each and every year and at all times of the year at his and their free will and pleasure as to the said land, with the appurtenances, belonging and appertaining: But the said James further saith, that one Sir J. R. bart. † long before and at the said time when, &c. was seized of and in the said manor of S. otherwise H. with the appurtenances, whereof the said waste or common called W. Common, otherwise H. W. Common and the said fourteen acres of land in which, &c. and the said other wastes and commons were parcel as aforesaid in his demesne as of fee; and the said Sir J. R. being so seized of the said manor, with the appurtenances, whereof, &c. and being lord of said manor as aforesaid, he the said Sir John, before the said time when, &c. to wit, on the twenty-second of April 1783, did inclose the said fourteen acres in which, &c. then being part of the said waste or common called H. Common, otherwise H. W. Common, from the residue thereof with certain mounds, fences, and pales, to hold the same fourteen acres of land in which, &c. to the said Sir John, his heirs and assigns for ever in fealty to his and their own use, and did approve the same there being then left by him, and remaining in the residue of the said waste or common called W. Common, otherwise H. W. Common, and in the said other wastes and commons within the same manor not inclosed sufficient common of pasture for all commonable cattle of the said R. levant and couchant upon the said (1) lands of the said C. with the appurtenances, and

and for all the commonable cattle of all other persons whatsoever of right having and using common of pasture in the said waste or common called W. Common, otherwise H. W. Common, and the said other wastes and commons within the said manor, with free ingress, egress, way, and passage for them and their commonable cattle, to have and use their common of pasture aforesaid in all the residue of the said waste or common called W. Common, otherwise H. W. Common, and in the other wastes and commons with the said manor; by virtue whereof, and by force of the statute in such case made and provided, the said sir J. before the said time when, &c. became and was seised of the said fourteen acres of land in which, &c. so inclosed in severalty by itself, and divided and separated from the residue of the said waste or common called W. Common, otherwise H. W. Common, by the said mounds, fences, and pales in his demesne as of fee; and being so seised thereof, he the said sir John afterwards and before the said time when, &c. to wit, on the eighth day of February 1785, at the parish of H. aforesaid, demised the said fourteen acres of land in which, &c. to the said James, to hold the same unto the said James from the said eighth day of February 1785, for, during, and unto the full end and term of nine hundred years from thence next ensuing, and fully to be complete and ended; by virtue of which said demise the said John afterwards and before the said time when, &c. to wit, on the ninth day of February. in the year last aforesaid, entered into the said fourteen acres of land in which, &c. and was possessed thereof, and being so possessed thereof, the said R. at the said time when, &c. of his own wrong broke and entered the said fourteen acres of land in which, &c. being the close in the said declaration mentioned, and pulled down, threw down, broke to pieces, prostrated, and destroyed the mounds, fences, and pales of the said James there then erected, standing, and being, and with feet in walking trod down, spoiled, and consumed the grass of the said James there then growing, and with the said cattle in the said declaration mentioned eat up, trod down, spoiled, and consumed other the grass of the said James, as the said James hath above thereof complained against him; and this he is ready to verify; wherefore inasmuch as the said R. hath above acknowledged the committing of that trespass, the said James prays judgment and his damages by occasion of the committing of that trespass to be adjudged to him, &c.

By virtue whereof, and of the statute, he became seised thereof in severalty.

and being so seised, he demised the same to plaintiff for nine hundred years,

who entered, &c.

Defendant, deinjuria, &c.

To 3d plea a like replication as to 2d.

And the said James, as to the said plea of the said R. by him thirdly above pleaded in bar as to the breaking, &c. &c. above alledged to have been done by the said R. saith, he by reason of any thing by the said R. above in that plea above alledged (*prec. udi non*); because he saith, that the said close in which, &c. at the said time when, &c. was fourteen acres of land § inclosed in manner and form hereinafter mentioned from the said waste or common called W. Common, otherwise H. W. Common, lying and being within the manor of H. otherwise S. in the said county of Middlesex, whereof the said fourteen acres, from time whereof, &c.

Rejoinder.

TRESPASS.—REJOINDER.—RIGHT OF COMMON.

&c. until the said inclosure thereof, were parcel, and that the said waste or common called W. Common, otherwise H. W. Common, whereof, &c. at the said time when, &c. was, and from time whereof, &c. hath been parcel of the manor of H. otherwise S. in the said county of Middlesex, within said manor there now are, and at the said time when, &c. were, and from time whereof, &c. have been divers other wastes or commons lying contiguous the one to the other, and parcel of the same manor, with the appurtenances, and containing together with the said waste or common called W. Common, otherwise H. W. Common, whereof, &c. divers, to wit, one thousand four hundred and ten acres on which said open wastes and commons he the said R. before and at the said time when, &c. had such and the said right of common as in and upon the said waste or common called W. Common, otherwise H. W. Common: And the said James further says, that true it is that the said messuage and land, with the appurtenances, in the said plea mentioned, were and have been and are within and parcel of the said manor and customary tenements of the said manor, as the said R. hath in that plea alledged; and that the said sir J. R. was seised of the said manor, and did grant the said messuages and lands to the said R. and that the said R. did enter and become seised thereof as the said R. hath in that plea above alledged; and that within the said manor whereof, &c. there now is, and from time whereof, &c. there hath been a certain ancient and laudable custom there used and approved of, that is to say, that every customary tenant of the said customary tenements, with the appurtenances, parcel, &c. for the time being, from time whereof, &c. until the time of the inclosure hereinafter next mentioned, have had, and have used and been accustomed to have and use, and of right during all the time aforesaid hitherto of right ought to have had and used, and still of right ought to have and use for himself and themselves, his and their farmers and tenants, occupiers of the said last-mentioned tenements, with the appurtenances, parcel, &c. common of pasture in, upon, and throughout the said waste or common called W. Common, otherwise H. W. Common, for all his and their commonable cattle levant and couchant in and upon the said messuages and lands last-mentioned, with the appurtenances, parcel, &c. in each and every year, at all times of the year, at his and their free will and pleasure as to the said messuages and lands last-mentioned, with the appurtenances, parcel, &c. belonging and appertaining; but the said James further saith, that the said sir J. R. [Same as in replication to second plea from † to the end]: And the said James, as to the said plea of the said Richard by him fourthly above pleaded in bar as to the breaking and entering, &c. &c. above alledged to have been done by the said Richard, saith, that he by reason of any thing by the said Richard in that plea alledged (*precludi non*); because protesting that the said Richard was nor is seised of divers messuages and one thousand acres of land, with the appurtenances, within the said manor, as the said R. hath in that plea alledged; for repli-

To 4th plea,

protesting, the
defendant was
not seised of the
messuages and
land.

TRESPASS.—REPLICATION.

209

replication in this behalf the said James says, that he the said R. at the said time when, &c. of his own wrong, broke and entered the said close of the said James in the said declaration mentioned, and pulled down, threw down, prostrated, broke to pieces, and destroyed the said part of the said mounds, fences, and pales of the said R. in the said declaration mentioned, and with feet in walking trod down, spoiled, and consumed the grafs of the said James there then growing, and with the said cattle in the said declaration mentioned eat up, trod down, spoiled, and consumed other the grafs of the said James there then growing in the said declaration mentioned, and with the wheels of the said carts, waggons, and other carriages, subverted, turned up, and spoiled the soil of the said James there in manner and form as the said James hath above complained against him; without this, that he the said Richard, and those whose estate he the said R. now hath, and at the said time when, &c. had of and in the said last mentioned messuages and land, with the appurtenances, from time whereof, &c. until the time of the inclosure in that plea mentioned, have dug and taken, and have used and been accustomed to dig and take, and during all the time aforesaid hitherto of right ought to have dug and taken, and still of right ought to dig and take for himself and themselves, his and their farmers and tenants, occupiers of the said last-mentioned messuage and land, with the appurtenances, sand and gravel in, upon, and throughout the said waste or common whereof, &c. for the necessary repairing and amending of the ways, paths, and walks of and in the gardens, orchards, and yards of and belonging to the said last-mentioned messuages, with the appurtenances, and for the necessary repairing and amending the ways in, upon, and belonging and appertaining to the said last-mentioned lands, with the appurtenances, every year at all times of the year as often as need or occasion hath required as to the said messuages and lands last-mentioned, with the appurtenances, belonging and appertaining, in manner and form as the said R. hath above in that plea alleged; and this, &c.; wherefore, &c.: And the said James, as to the said plea of the said R. by him fifthly above pleaded in bar, as to the breaking and entering, &c. above alleged to have been done by the said Richard, saith that he by reason of any thing by the said R. above in pleading alleged (*precludi non*); because protesting that the said sir John Rushout did not grant the messuages and lands in that plea mentioned unto the said R. as the said R. hath in that plea alleged; for replication in this behalf the said James says, that the said R. at the said time when, &c. of his own wrong broke and entered the said close in the said declaration mentioned, and pulled down, &c. &c. &c.; without this, that within the said manor whereof, &c. there now is, and from time whereof, &c. there hath been a certain ancient and laudable custom there used and approved of, that is to say, that every customary tenant of the said customary tenements last-mentioned, with the appurtenances, parcel, &c. for the time being, from time whereof, &c. until the time of the inclosure in that plea mentioned, have dug and taken,

Says that defendant *de injuria*, &c.

Traverse of the custom to dig sand.

To 5th Plea.

Protesting sir J. R. did not grant, &c.

Says *de injuria*, &c.

Traverse of the custom within the manor to dig sand, &c.

and have used and been accustomed to dig and take, and during all the time aforesaid hitherto of right ought to have dug and taken, and still of right ought to dig and take for himself and themselves, his and their farmers and tenants, occupiers of the said last-mentioned messuages and land last-mentioned, with the appurtenances, parcel, &c. sand and gravel in, upon, and throughout the said waste or common, parcel, &c. whereof, &c. for the necessary repairing and amending of the ways, paths, and walks in the gardens, orchards, and wards of and belonging to the said last-mentioned messuages, with the appurtenances, parcel, &c. and for the necessary repairing and amending of the ways in, upon, and belonging and appertaining to the said last-mentioned lands, with the appurtenances, parcel, &c. every year at all times of the year as often as need or occasion hath required, as to the said messuages and lands last mentioned belonging and appertaining, as the said R. hath in that plea alledged; and this, &c.; wherefore, &c.

Like replication to defendant's pleas.
Dancer's pleas.
To 10th plea.

[Replication to sixth mentioned plea by Dancer similar to first. Replication to seventh plea similar to third. Replication to eighth plea. Similar. Similar to fourth replication:] And the said James, as to the said plea of the said Richard by him tenthly above pleaded in bar, as to the breaking and entering, &c. &c. above alledged to have been done by the said Richard, saith that he by reason of any thing in that plea alledged (*procludi non*); because protesting that the said plea, and the matters therein contained, are not sufficient in law to bar the said James from having and maintaining his aforesaid action thereof against him the said Richard;

protesting insufficiency;

protesting against the custom to approve.

because protesting also that there is not, nor from time whereof, &c. there hath not been any such custom within the said manor used and approved of touching the improvement or inclosure of the said wastes of the said manor of H. otherwise S. whereof, &c. as the said R. hath in that plea alledged; for replication nevertheless in this behalf he the said James saith, that the said close in which, &c. at the said time when, &c. was fourteen acres of land

Same replication as to 3d plea.

To 11th plea, protesting, and for replication *de injuria*; and traverse of the custom to dig gravel.

[Same as in replication to third plea by Page]: And the said James, as to the said plea of the said R. by him elevenchly above pleaded in bar as to the breaking, &c. &c. &c. protesting that there is no such custom of approvement and inclosure [Same as in replication to tenth plea for replication *de injuria sua propria*, and traverse of the custom of digging sand and gravel, same as in replication to fifth plea. Replication to twelfth plea by Dancer,

Like replication to 12th and 13th pleas.

same as replication to tenth plea by Page. Replication to thirteenth plea by Dancer, same as replication to eleventh plea by Page.]

GEO WOOD.

Rejoinder to replication to 2d plea.

And the said Richard, as to the said plea of the said James by him above pleaded by way of reply to the said plea of the said Richard by him secondly above pleaded in bar, as to the breaking and entering, &c. &c. above supposed to have been done by the said Richard, he the said Richard R. says, that the said James by reason of any thing in his said plea by him above pleaded by way of

reply

reply to the said plea of the said R. by him secondly above in bar alledged (*actio non*); because he says, that the said James had wrongfully and injuriously before the said time when, &c. mended, fenced, inclosed, and shut up the said close in which, &c. parcel, &c. from the said common or waste whereof, &c. under pretence of holding the said close in which, &c. parcel, &c. in severalty, and to his own use by way of approving of the said close in which, &c. &c. parcel, &c. as the said James hath in his said plea by him above pleaded in bar alledged, and wrongfully and injuriously kept and continued the said mounds, fences, and pales so erected, standing, and being in and upon the said close in which, &c. parcel, &c. until and at the said time when, &c. and thereby wrongfully and injuriously, under the pretence aforesaid, mounded, fenced, and inclosed, and shut up the said close in which, &c. parcel, &c. from the residue of the said waste or common, whereof, &c. in manner and form as the said Richard hath in his said plea by him above pleaded in bar; without this, that at the time of mending, fencing, inclosing, and shutting up the said close in which, &c. parcel, &c. as aforesaid, at any time after there was left by the said Sir John Rushout and the said James, or either of them, or was there remaining in the residue of the said waste or common called W. Common, otherwise H. W. Common, and in the said other wastes or commons within the said manor not inclosed, sufficient common of pasture for all commonable cattle levant and couchant of the said R. upon the said land of the said Richard, with the appurtenances, and for all commonable cattle of all other persons whatsoever of right having and using common of pasture in the said waste or common called W. Common, otherwise H. W. Common, and the said other wastes or commons within the said manor, with free ingress, egress, way, and passage for them and their commonable cattle, to have and use their common of pasture aforesaid in all the residue of the said waste or common called W. Common, otherwise H. W. Common, and in the said other wastes and commons within the said manor, in manner and form as the said James hath in his said plea by him above pleaded by way of reply to the said plea of the said Richard by him secondly above pleaded in bar alledged; and this, &c.; wherefore, &c.: And the said R. as to the said plea of the said James by him thirdly above pleaded in bar as to the breaking and entering, &c. &c. above supposed to have been done by the said R. he the said R. says, that the said James by reason of any thing in his said plea by him above pleaded, by way of reply to the said Richard by him above pleaded in bar alledged (*actio non*); because he says, that the said James had wrongfully and injuriously before the said time when, &c. mounded, fenced, inclosed, and shut up the said close in which, &c. parcel, &c. in severalty to his own use by way of approving the said close in which, &c. parcel, &c. as the said James was in his said plea by him above pleaded by way of reply to the said plea of the said Richard by him thirdly above pleaded in bar alledged, and wrongfully and injuriously kept and continued the said mounds, fences, and pales so erected, standing, and being in and upon the said close in which, &c. parcel, &c. un-

That plaintiff had wrongfully inclosed locus, under pretence of holding it in severalty by way of approving,

and wrongfully continued the fences,

and thereby wrongfully inclosed locus.

Traverse of sufficiency of common being left.

To replication to 3d plea a like rejoinder.

TRESPASS.—REJOINDER.—(RIGHT OF

til and at the said time when, &c. thereby wrongfully and injuriously, under the pretence aforesaid, mounded, fenced, inclosed, and shut up the said close in which, &c. parcel, &c. from the said residue of the said waste or common whereof, &c. in manner and form as the said Richard hath in his said plea by him thirdly above pleaded in bar alledged; without this, that at the time of mounding, fencing, inclosing, and shutting up the said close in which, &c. parcel, &c. as aforesaid, or at any time after there was left by the said sir J. R. and the said James, or either of them, or was there remaining in the residue of the said waste or common called W. Common, otherwise H. W. Common, and in the said other wastes or commons within the said manor not inclosed sufficient common of pasture for all commonable cattle levant and couchant upon the said messuages and lands of the said R. with the appurtenances, and for all the commonable cattle of all other persons whatsoever of right having and using common of pasture in the said waste or common called W. Common, otherwise H. W. Common within the said manor, with free ingress, egress, way, and passage for them and their commonable cattle levant and couchant, to have and use their common of pasture aforesaid in all the residue of the said waste or common called Weeled Common, otherwise Harrow Weeled Common, and in the said wastes and commons within the said manner, in manner and form as the said James Cutler in his said plea by him above pleaded by way of reply to the said plea of the said Richard by him thirdly above pleaded in bar alledged; and this, &c.; wherefore, &c.: And the said Richard, as to the said plea of the said James by him above pleaded by way of reply to the said plea of the said Richard by him fourthly above pleaded in bar, as to the breaking and entering, &c. &c. above supposed to have been done by the said R. he the said R. says, that the said James, by reason of any thing (*actio non*); because he the said Richard (as before) says, that the said R. and all those whose estates he the said R. now hath, and at the said time when, &c. had aforesaid in the said last-mentioned messuages and lands, with the appurtenances, from time whereof, &c. until the time of the inclosure in that plea mentioned, have dug and taken, and have used and been accustomed to dig and take, and during all the time aforesaid hitherto of right ought to have dug and taken, and still of right ought to dig and take for himself and themselves, his and their farmers and tenants, occupiers of the said last-mentioned messuage and land, with the appurtenances, sand and gravel in, upon, and throughout the said waste or common whereof, &c. for the necessary repairing and amending of the ways, paths, and walks of and in the gardens, orchards, and yards of and belonging to the said messuages, with the appurtenances, every year at all times of the year as often as need or occasion hath required as to the said messuages and lands last-mentioned, with the appurtenances, belonging and appertaining, in manner and form as the said Richard hath above in that plea alledged; and of this the said Richard puts himself upon the country, &c.: And the said R. as

To replication
to 4th plea.

Issue on traverse.

To replication to
5th plea.

R. as to the said plea of the said James by him above pleaded by way of reply to the said plea of the said R. by him fifthly above pleaded in bar as to the breaking and entering, &c. &c. above supposed to have been done by the said Richard, says, that the said James, by reason, &c. &c. (*actio non*); because the said Richard (as before) says, that within the said manor whereof, &c. there now is, and from time whereof, &c. there hath been a certain ancient and laudable custom there used and approved of, that is to say, that every customary tenant of his said customary tenements last-mentioned, with the appurtenances, parcel, &c. for the time being, from time whereof, &c. until the time of the inclosure in that plea mentioned, have dug and taken, and have used and been accustomed to dig and take, &c. &c. for himself and themselves, his and their farmers and tenants, occupiers of the said last-mentioned messuages and lands, with the appurtenances, parcel, &c. sand and gravel in, upon, and throughout the said waste or common, parcel, &c. whereof, &c. for the necessary repairing and amending of the paths, ways, and walks of and in the gardens, orchards, and yards of and belonging, &c. &c. &c. as to the said last-mentioned messuages and lands, with the appurtenances, belonging and appertaining, as the said Richard hath in that plea alledged; and of this he the said Richard puts himself upon the country, &c. [The like rejoinders by Dancer to plaintiff's replication to second, third, fourth, and fifth pleas.]

Issue contraversio.

And the said Richard, as to the said plea of the said James by him above pleaded by way of reply to the said plea of the said Richard by him sixthly above pleaded in bar, as to the breaking, &c. above supposed to have been done by the said Richard, says, that the said James (*actio non*); because protesting there is, and from time whereof, &c. there hath been such custom within the said manor used and approved of touching the improvement or inclosure of the wastes of the said manor of H. otherwise S. whereof, &c. as the said Richard hath in that plea alledged; yet the said R. for rejoinder in this behalf says, that the same replication, and the matters therein contained, are insufficient in law for the said James to have or maintain his aforesaid action thereof against him the said Richard, to which said plea, in manner and form as the same is above pleaded in reply, and the matters therein contained, the said R. is under no necessity, nor is he any way bound by the law of the land to answer; and this, &c.; wherefore for want of a sufficient replication in this behalf the said Richard prays judgment, and that the said James may be barred from having and maintaining his aforesaid action thereof against him, &c.: And the said Richard, as to the said plea of the said James by him seventhly above pleaded in bar, as to the breaking and entering, &c. &c. &c. above supposed to have been done by the said Richard, says, that the said James (*actio non*); because protesting that there now is, and from time whereof, &c. there hath been such custom within the said manor used and approved of touching the improvement

Demurrer to replication to 20th plea.

To replication to 11th plea.

or inclosure of wastes of the said manor of H. otherwise S. whereof, &c. as the said R. hath in that plea alledged, the said Richard (as before) says [Prescription same as rejoinder to fifth plea by Page] in manner, &c.; and of this the said R. puts himself upon the country, &c. [The like rejoinder to the plaintiff's replication to Dancer's sixth and last pleas.]

THO. WALKER.

Surrejoinder.

**Issue on traverse
for replication to
6th plea.**

And the said James, as to the said plea of the said Richard by him above pleaded by way of rejoinder to the said plea of the said James by him above pleaded in reply to the said plea of the said Richard by him secondly above pleaded in bar as to the breaking and entering, &c. &c. above alledged to have been done by the said Richard (as before) saith, that at the time of mounding, fencing, inclosing, and shutting up the said close in which, &c. parcel, &c. as aforesaid, and at all times afterwards there was left by the said sir J. Rushout, and there was remaining in the said waste or common called W. Common, otherwise H. W. Common, and in the said other wastes or commons within the said manor not inclosed sufficient common of pasture for all commonable cattle of the said R. levant and couchant upon the said land of the said R. with the appurtenances, and for all the commonable cattle of all other persons whatsoever of right having and using common of pasture in the said waste or common called W. Common, otherwise H. W. Common, and the said other wastes or commons within the said manor, with free ingress, egress, way, and passage for them and their commonable cattle, to have and use their common of pasture aforesaid, in all the residue of the said waste or common called W. Common, otherwise H. W. Common, and in the said other wastes or commons within the said manor, in manner and form, &c. &c. and this he prays may be enquired of by the country, &c.: And the said Richard doth so likewise. [The like surrejoinder to Page's rejoinder to plaintiff's replication to Page's third plea]: And the said James, as to the said plea of the said Richard by him above pleaded by way of rejoinder to the said plea of him the said James by him above pleaded by way of reply to the said plea of the said Richard by him fourthly above pleaded in bar, and whereof the said Richard hath put himself upon the country, &c. he the said James doth so likewise. [The like surrejoinder to Page's rejoinders to plaintiff's replication to Page's fifth plea. The like surrejoinder to Dancer's four rejoinders to plaintiff's replications to Dancer's second, third, fourth, and fifth pleas]: And the said James says, that the said plea of him the said James in manner and form pleaded by way of reply to the said plea of the said Richard by him sixthly above pleaded in bar, and the matters therein contained, are sufficient in law for him the said James to have or maintain his said action thereof against him the said Richard; which said plea, and the matters therein contained, he the said James is ready to verify and prove as the court shall award, and because the said Richard hath not answered the said plea, nor hath in any manner denied the same, the said James (as before) prays judgment and his damages;

Joinder in demurrer.

damages, by reason of the premises, to be adjudged to him, &c.: And the said James, as to the said plea of the said Richard by him above pleaded by way of rejoinder to the said plea of the said James by him above pleaded by way of reply to the said plea of the said Richard by him seventhly above pleaded in bar, and wherein the said Richard hath put himself upon the country, he said James doth so likewise. [The like surrejoinders by Dancer]; but because the court of our lord the king, before the king himself now here, will advise among themselves what judgment to give in the premises wherein the parties have put themselves upon the judgment of the court here, before they give judgment thereon, a day therefore is given to the parties aforesaid to come before our lord the king at Westminster on next after to hear judgment thereon, because that the court of our lord the king now here is not fully advised thereof, and as well to try the several issues aforesaid above joined to be tried by the county, as to enquire what damages the said James Duberley hath sustained on occasion of the premises, whereof the said parties had above put themselves upon the judgment of the court, in case judgment should be thereon given for the said James Duberley, let a jury come, &c. &c.

Continuance by
curia adv. vult.

GEO. WOOD.

Afterwards, that is to say, on the day and at the place within-mentioned, before the honourable Francis Buller, esquire, one of the justices of our lord the now king, assigned to hold pleas in the court of our said lord the king, before the king himself there, being associated unto him John Way, gentleman, according to the form of the statute in such case made and provided, came as well the within-named James Duberley as the within-named Richard Page and Daniel Dancer by their attornies within contained, and the jurors of that jury, whereof mention is within made, being summoned, some of them, that is to say, James Clitherow, esquire, Benjamin Lucas, esquire, Robert Higginson, esquire, Simon Le Sage, esquire, Edward Barnaby Green, esquire, James Brindly, esquire, and John Richly, esquire, appear and are sworn on that jury; and because the residue of the jurors of the same jury whereof mention is within made do not appear, therefore other persons standing by the court by the sheriff of the county aforesaid, at the request of the said James Duberley, and by the command of the said justice above named are now newly set down, whose names are assised in the within written parcel, according to the form of the statute in that case made and provided; which said jurors so newly set down, that is to say, William Shephard, Edmund King, John Robers, Thomas Hart, and Richard Talbot, being required, came, who together with the said other jurors before impannelled and sworn to declare the truth of the within contents, being elected, tried, and sworn as to the first issue between the parties aforesaid within joined upon their oath say, that the said Richard Page and Daniel Dancer are guilty of

Postea.

Tales circumjuncti
sibus.

TRESPASS.—PLEA—RIGHT OF COMMON

the trespasses within laid to their charge, in manner and form as the said James Duberley hath within thereof complained against them: And as to the fourth issue between the said R. Page and the said J. Duberley within likewise joined, the same jurors, on their oath aforesaid, further say, that the said R. Page, and ^{all} those whose estates he said R. Page now hath, and at the said time when, &c. had of and in the within-mentioned messuages and lands, with the appurtenances, from time whereof, &c. until the time of the inclosure in the said plea of the said R. Page by him fourthly within pleaded in bar mentioned, have dug and taken, and have used and been accustomed to dig and take, and during all the time aforesaid hitherto of right ought to have dug and taken, and still of right ought to dig and take for himself and themselves, his and their farmers and tenants, occupiers of the said last-mentioned messuages and lands, with the appurtenances, sand and gravel in, upon, and throughout the within-mentioned waste or common whereof, &c. for the necessary repairing and amending of the ways, paths, and walks of and in the gardens, orchards, and yards of and belonging to the said last mentioned messuages, with the appurtenances, and for the necessary repairing and amending of the ways in, upon, and belonging and appertaining to the said last-mentioned lands, with the appurtenances, every year at all times of the year as often as need or occasion hath required as to the said messuages and lands last-mentioned, with the appurtenances, belonging and appertaining, in manner and form as the said Richard hath in his said plea by him fourthly within pleaded alledged [All the other issues respecting the right of digging sand and gravel were found for the defendants]: And as to the said other issues respectively joined between the parties aforesaid, to be tried by the country for certain causes moving as well the said justice above-mentioned as the said parties, the jury aforesaid sworn to try the said issues are entirely discharged from giving any verdict of or upon them; therefore it is considered that the said James Duberley take nothing by his said bill, but that he be in mercy of the court for his false clamour, and that the said Richard Page and the said Daniel Dancer go thereof without day; and it is further considered, that the said R. Page and D. Dancer recover against the said James Duberley for their costs and charges laid out by them about their defence on this behalf adjudged to the said R. Page and D. Dancer by the court of our lord the king now here by their own assent, according to the form of the statute in such case made and provided, and that the said R. Page and the said D. Dancer have execution thereof, &c.

Drawn by MR. J. GRAHAM.

Plea 1st, General issue, and Plea.

AND the said John Ferguson, by his attorney, comes and defends the force and injury, when, &c. [general issue]: And for further plea as to the breaking and entering the said closes called, &c. in the said first Count of the said declaration mentioned;

in

in which, &c. and with his feet in walking treading down, spoiling, and consuming the said grass there lately growing, and with horses, mares, and geldings, cows, oxen, and sheep of the said cattle in the said declaration mentioned, eating up, depasturing, treading down, consuming, and spoiling the said other grass there also growing, and with the wheels of carts, waggons, and other carriages turning up and subverting the said soil there in the said closes, and with spades and other instruments digging in the said soil there in the said closes, and thereout digging and getting the said turfs and flacks in the declaration first above-mentioned, and the said turfs and flacks so thereout got, taking and carrying away, and converting and disposing thereof to his own use above supposed to have been committed by the said J. Ferguson, he the said J. Ferguson, by leave, &c. says, that the said J. Irwing (*a710 n. n.*); because he says, that the said closes called, &c. in the said first Count of the said declaration mentioned are, and at the said several times when, &c. and long before were one and the same piece or parcel of land called as well by those several and respective names as by the name of Gill Loaping, the Back of the Little Hen Mofs, the Common without the Bernthill Year, and the Sike Side, and lying and being in Kingmoor afore said; and that the said John Ferguson, and one Robert Ferguson, and one Richard Ferguson, long before any of the said times when, &c. and still are seised of and in a certain messuage and divers, to wit, fifty acres of land called Curigh Dyke, with the appurtenances, in the parish of Stanwick, in the said county of Cumberland, in their demesne as of fee; and that they the said J. Ferguson, Richard, and Robert, and all those whose estates they now have, and at the said several times when, &c. had of and in the said messuage and land called Curigh Dyke, with the appurtenances, from time whereof the memory of man is not to the contrary, have had and have used, and been accustomed to have, and of right ought to have a common of pasture in the said piece or parcel of land in which, &c. for all their commonable horses, mares, geldings, cows, oxen, and sheep levant and couchant upon the said messuage and land called Curigh Dyke, with the appurtenances, every year at all times of the year as to the same messuage and lands, with the appurtenances, belonging and appertaining; and that the said John Ferguson, Richard, and Robert, and all those whose estates they now have, and at the said several times when, &c. had of and in the said messuage and land called Curigh Dyke, with the appurtenances, from time whereof, &c. have dug and taken, and been used and accustomed to dig and take, and still of right ought to dig and take flacks in and upon the said piece or parcel of land in which, &c. for the necessary covering of the said messuage, with the appurtenances, and repairing the fence of the said land of them the said John Ferguson, Richard, and Robert, every year at all times of the year as often as occasion required, as to the said messuage and land, with the appurtenances, belonging and appertaining; and also that the said John Ferguson, Richard,

Defendant and two others seised in fee of a messuage and land.

Prescription for common of pasture in locus in quo in commonable horses, &c.

Prescription to dig flacks in locus for covering house, and repairing fences.

Prescription to dig turfs for necessary fuel.

and Robert, and all those whose estates they now have, and at the said several times when, &c. had of and in the said messuage and land, with the appurtenances, from time whereof, &c. have dug and taken, and have been used and been accustomed to dig and take, and still of right ought to dig and take turfs in and upon the said piece or parcel of land in which, &c. for their necessary fuel to be burnt and consumed in the said messuage every year at all times of the year, as to the said messuage, with the appurtenances, belonging and appertaining: And the said John Ferguson further saith, that the said J. Ferguson and the said Richard and Robert being so seised of and in the said messuage, &c. with the appurtenances, &c. as aforesaid, he the said J. Ferguson, at the said several times when, &c. put the said horses, mares, geldings, cows, oxen, and sheep in the said declaration first mentioned, then being the commonable horses, mares, geldings, cows, oxen, and sheep of the said J. Ferguson, Richard, and Robert, levant and couchant in their said messuage and land called Curigh Dyke, with the appurtenances, into the said piece or parcel of land in which, &c. to feed and depasture upon the grass then there growing, and to use their said common of pasture there as he lawfully might, and on that occasion the said horses, &c. at the said several times when, &c. eat up, depastured, trod down, consumed, and spoiled the said grass then growing in the said place in which, &c. using the said common of pasture of the said J. Ferguson, Richard, and Robert there: And the said J. F. further saith, that before and at the said several times when, &c. the said messuage was in decay for want of covering, and certain fences of and belonging to the said land, before and at the said several times when, &c. were ruinous and in great decay for want of repairing thereof, and in order to cover the said messuage, and repair and amend the said fences, and the covering the said messuage, and repairing and amending the said fences, and for getting of turfs for necessary fuel to be burnt and consumed in the said messuage, he the said J. Ferguson, at the said several times when, &c. with spades and other instruments dug in the soil in the said piece or parcel of land in which, &c. and thereout dug and got the said turfs and flacks in the said declaration first mentioned, for the respective purposes aforesaid, and with carts, waggons, and other carriages, did take, lead, and carry away the same from and out of the said piece or parcel of land called Curigh Dyke, in which, &c. for the purposes aforesaid, and burnt and consumed the said turfs in the said messuage, and used the said flacks in covering the said messuage, and in the reparation of the said fences so being ruinous and in decay as aforesaid, as it was lawful for him to do, and the said J. F. in passing and repassing the said piece or parcel of land in which, &c. with the said carts, waggons, and other carriages for the taking and leading away the said turfs and flacks thereout at the said several times when, &c. did necessarily and unavoidably turn up and subvert the said soil there in the said piece or parcel of land in which, &c. with the wheels

Defendant put
in his cattle to
use his common
of pasture,

as it was lawful,
&c.

Defendant's
house out of re-
pair, and fences
also.

Defendant, in
order to repair
and to get turfs
for fuel, dug,
&c.

of carts, waggons, and other carriages, and did also tread down, spoil, and consume some little grafs there then growing with his feet in walking, doing as little damage on that occasion as he possibly could, which are the same breaking and entering, &c. whereof the said J. Irwing hath above complained against him; and this &c.; wherefore, &c.: [Third plea same exactly as second plea, only to the second Count instead of the first]: And for further plea as to the assaulting, beating, wounding, and evil treating the said J. Irwing above supposed to have been done, he the said J. Ferguson, by like leave, &c. says, that the said J. I. (*actio non*); because he the said J. Ferguson says, that he the said J. F. before and at the said time when, &c. at King'smoor aforesaid, was lawfully possessed of a certain large quantity of turfs, to wit, one cart load of turfs; and being so possessed thereof, he the said J. I. at the said time when, &c. with force and arms, at King'smoor aforesaid, did attempt and endeavour forcibly, and with a strong hand, and against the will of the said John Ferguson, to take the said turfs from and out of the possession of the said John Ferguson; whereupon the said J. F. in preservation of his said turfs, and for the defence of his possession thereof, did then and there gently lay his hands upon the said J. I. and did then and there resist and oppose the said J. I. in his said attempt and endeavour, as it was lawful for him to do: And the said J. F. further saith, that if any damage or harm then and there happened to the said J. I. it was occasioned by the said attempt and endeavour of the said J. I. and in defence of the property and possession of the said John Ferguson of his said turfs, and to prevent the same being taken and carried away by the said J. I.; and this, &c.; wherefore, &c.

JAMES WALLACE.

3d Plea. 1
4th Plea, as to assaulting, &c. that the defendant was possessed of a quantity of turf, which the plaintiff endeavoured to take from him.

And the said John Irwing, as to the said plea of the said John Ferguson by him above secondly pleaded in bar as to the breaking and entering, &c. committed by the said John Irwing by reason of any thing in that plea alledged (*actio non*); because he saith, that true it is that the said close called, &c. in the said first Count of the said declaration mentioned are, and at the said several times when, &c. and long before were one and the same piece or parcel of land called as well by those several names as by the name of Gill Loaping, &c. and lying and being in King'smoor aforesaid, as the said John Ferguson hath above in that plea alledged; but the said J. I. further saith, that the said John Ferguson at the said several times when, &c. in the said declaration first above mentioned, of his own wrong broke and entered the said piece or parcel of land in which, &c. and with his feet in walking trod down, spoiled, and consumed the said grafs there lately growing, and with horses, &c. in the said declaration first mentioned, eat up, depastured, trod down, spoiled, and consumed the said other grafs there also growing, and with the wheels of carts, waggons, and other carriages, turned up and subverted the said soil there in the said piece or parcel of land in which, &c. and thereout dug and got the said turfs

De injuria sua, &c.

(a) In defence of Personal Property.

and

Traverse of com-
mon of pasture.

and flacks in the said declaration first mentioned, and the said turfs and flacks thereout dug, took, and carried away, and converted and disposed of the same to his own use, in manner and form as the said J. I. hath above thereof complained against him; without this, that the said J. F. Richard, and Robert, and all those whose estates they now have, and at the said several times when, &c. had of and in the said messuage and land called Curigh Dyke, with the appurtenances, in that plea mentioned, from time whereof, &c. have had, and have been used and accustomed to have, and still of right ought to have common of pasture in the said piece or parcel of land in which, &c. for all their commonable horses, &c. levant and couchant in and upon the said messuage and land called Curigh Dyke, with the appurtenances, every year at all times of the year as to the same messuage and land, with the appurtenances, belonging and appertaining; and without this, that they the said J. F. Richard, and Robert, and all those whose estates they now have, and at the said several times when, &c. had of and in the said messuage and land called Curigh Dyke, with the appurtenances, from time whereof, &c. have dug and taken, and have used and been accustomed to dig and take, and still of right ought to dig and take flacks in and upon the said piece or parcel of land in which, &c. for the necessary covering of the said messuage, with the appurtenances, and repairing the fences of the said land of the said J. F. Richard, and Robert, every year at all times of the year as often as occasion required as to the said messuage and land called Curigh Dyke, with the appurtenances, belonging and appertaining; and without this, that they the said J. F. Richard, and Robert, and all those whose estates they now have, and at the said several times when, &c. had of and in the said messuage and land called Curigh Dyke, with the appurtenances, from time whereof, &c. have dug and taken, and have used and been accustomed to dig and take flacks in and upon the said piece or parcel of land in which, &c. for the necessary covering of the said messuage, with the appurtenances, and repairing the fences of the said land of the said J. F. Richard, and Robert, every year at all times of the year as often as occasion required as to the said messuage and land called Curigh Dyke, with the appurtenances, belonging and appertaining; without this, that the said John Ferguson, Richard, and Robert, and all those whose estates they now have, and at the said several times when, &c. had of and in the said messuage, with the appurtenances, from time whereof, &c. have dug and taken, and have been used and accustomed to dig and take, and still of right ought to dig and take turfs in and upon the said piece or parcel of land in which, &c. for their necessary fuel to be burnt and consumed in their said messuage, every year at all times of the year as occasion required as to the said messuage and land called Curigh Dyke, with the appurtenances, belonging and appertaining, in manner and form as the said John Ferguson hath in that plea above mentioned; and this, &c.; wherefore since, &c.

Traverse of right
to dig flacks.

Traverse of right
to dig turfs.

Replication to
last plea, *de in-
juria.*

[Same replication to 3d Plea]: And the said John Ferguson, as to

to the said plea of the said J. F. by him fourthly above pleaded in bar, as to the assaulting, &c. saith, that the said J. I. by reason, &c. (*precludi non*); because he says, that the said J. F. at the said time when, &c. at Kingmoor aforesaid, of his own wrong, without the cause by the said J. F. above in that plea alledged, assaulted, beat, wounded, and evil treated him the said J. I. as he hath above thereof complained against him; and this he prays may be enquired of by the country, &c. [Similiter].

JAMES HEWITT.

And the said J. F. as to the said plea of the said J. I. above in reply pleaded to the said plea of the said J. F. by him secondly above pleaded in bar, as to the breaking and entering, &c. above supposed to be committed (as before) saith, that the said J. F. Richard, and Robert, and all those whose estates they now have, &c. &c. [Here insert the right to have common of pasture in manner and form as the said J. F. hath above alledged]: And also they the said J. F. Richard, and Robert, and all those, &c. [Here insert the right to dig flacks] in manner and form as the said J. F. hath above alledged: And also, &c. [The right to dig turfs] in manner and form as the said J. F. hath above alledged; and of this he puts himself upon the country, &c. [Similiter, same rejoinder to replication to 3d Plea], therefore, &c.

JAMES WALLACE.

As the plaintiff hath never exercised any acts of ownership upon the *locus in quo* it will be necessary for him to go into the fact but re the defendant need enter upon his defence.

It is admitted upon the pleadings, that the defendants and his brothers are seised in fee, and therefore not necessary to be proved.

The defendant must be prepared to prove that the occupiers of the estate which now belongs to him and his brothers, have always had common of pasture for their horses, cows, oxen and sheep, and have dug flacks for the purposes in the plea

mentioned, and also turfs in the *locus in quo*.

The defendant ought to be prepared to give evidence touching the supposed assault, and the occasion thereof, rather than trust to the cross examination of plaintiff's witnesses.

It may not be amiss to serve the mayor of C. with a *subpoena duces tecum* of the charter, if he has the custody thereof, but I have a notion that the records are kept under three locks, the keys of which are kept by different persons; if so, the *subpoena* should be directed to those persons.

JAMES WALLACE.

RIGHT OF WARREN, &c.

AND the said sir Theophilus further saith, that before the said first time when, &c. and also at the said several times when, &c. he the said sir Theophilus was and still is seised of and in the said manor of Frankton, with the appurtenances, in his demesne as of fee, and that he the said sir Theophilus, and all those whose estate he hath, and at the said several times when, &c. had of and in the

D. sendat t. seised of the manor.

Prescription for a free warren over *locus in quo*.

said manor, with the appurtenances, from time whereof the memory of man is not to the contrary, have had and have used, and been accustomed to have and use, and the said sir Theophilus still of right ought to have and use the free warren in and over the said manor of Frankton, and in and over the said closes in which, &c. parcel, &c. to wit, at Frankton aforesaid, in the said county; wherefore he the said sir Theophilus, at the said first time when, &c. and also at the said several times when, &c. with the said dogs in the said declaration mentioned, entered on the said horse, part of the said cattle in the said declaration mentioned, into the said close in which, &c. parcel, &c. to use his free warrant there, and with his said dogs hunted the said game in the said closes in which, &c. to use his free warrant in and upon the said close in which, &c. parcel, &c. as he lawfully might for the cause aforesaid, and in so doing he the said sir Theophilus did necessarily and unavoidably with his feet in walking tread down, trample upon, spoil, and consume a little of the grass there then growing, and with the said horse trod down, trampled upon, spoiled, and consumed a little other of the grass then and there also growing in pursuit of the said game in the said closes, parcel, &c. and with the feet of the said dogs by such hunting tore up, damaged, and spoiled a little other grass there then also growing, he the said sir Theophilus doing as little damage on that occasion as he possibly could, which are the said several trespasses in the introduction to this plea mentioned, whereof, &c.; and this, &c.; wherefore, &c.: And for a further plea in this behalf as to the breaking and entering, &c. by like

4th Plea.

In 41. Hen. 3.
the prior of, &c.
seised of 1000
acres in F.

leave, &c. (*actio non*); because he says, that long before the said times when, &c. to wit, on the thirtieth of July, in the forty-first year of the reign of Henry the Third, late king of England, the prior of the late discovered priory or monastery of the Blessed Virgin Mary, in the city of Coventry, was seised of divers, to wit, one thousand acres of land, with the appurtenances, situate and being at Frankton aforesaid, in the county aforesaid, in his demesne as of fee in right of said priory or monastery, whereof the said closes in which, &c. then were and still are parcel, and the said prior being so seised thereof afterwards, and long before the said times when, &c. the said Henry the Third, late king of England, by his letters-patent sealed with his great seal of England, bearing date at Litchfield, in the county of Stafford, on the thirtieth of July, in the forty-first year of his reign, (which said letters patent the said sir Theophilus now brings here into court, the date whereof is the same day and year above in that behalf mentioned) granted and confirmed to the said prior and convent of Coventry (amongst other things) that they and their successors for ever should have free warren in the said demesne lands of Frankton aforesaid, among other lands belonging to the said prior and convent, provided the said lands were not within the bounds of any forest belonging to the said king, so that none should enter those lands, or chase, or take any thing in them which belonged to the warren without the licence or consent of the said priory

Hen. 3. by letters patent,
granted to the
said prior that he
should have free
warren.

or convent, or their successors, under the forfeiture of ten pounds, as by the said letters patent (amongst other things) more fully appears; by virtue of which said letters patent the said prior and his successors, priors of the said monastery or priory, until the time of the said surrender or dissolution thereof, became and were seised as of fee and right of and in the said free warren in and over the said one thousand acres of land whereof, &c. in Frankton afore-
 said in right of his or their said monastery or convent, and that afterwards, to wit, on the fifteenth of January, in the thirteenth year of the reign of our late sovereign lord Henry the Eighth, king of England, at Frankton afore-
 said, the said then prior of the said monastery or convent being seised of the said one thousand acres of land, with the appurtenances, in Frankton afore-
 said, in right of the said monastery or convent, with the consent of the said prior then convened, by his certain writing with the common seal of the said convent or priory, and in the court of chancery of the said late king Henry the Eighth, then being at Westminter in the county of Middlesex, of record inrolled (and which said deed of surrender, bearing date the same day and year last afore-
 said, the said sir Theophilus brings here into court), gave, granted, and surrendered to the said late king Henry the Eighth, (amongst other things) the said one thousand acres of land, with the appurtenances, whereof, &c. the said free warren in and over the same land, to have and to hold to the same king, his heirs and successors for ever: And the said sir Theophilus further says, that afterwards, by a certain act made in the parliament of the said late king Henry the Eighth, holden at Westminster afore-
 said, on the twenty-eighth of April, in the thirty-first year of the reign of the said king Henry the Eighth, it was enacted, that the same king should have, hold, possess, and enjoy to him, his heirs and successors for ever, all and singular such late monasteries, abbottries, priories, nunneries, colleges, hospitals, houses of friars, and other religious and ecclesiastical houses and places of what kinds, natures, qualities, or diversities of habits, rules, professions, or orders they or any of them were named, known, or called, which since the fourth of February, in the twenty-seventh year of the reign of the late king Henry the Eighth, had been dissolved, suppressed, renounced, relinquished, forfeited, given up, or by any other means come to the highness of the same king, and by the same authority and in like manner should have, hold, possess, and enjoy all the suits, circuits, precincts, manors, lordships, granges, messuages, lands, tenements, meadows, pastures, rents, reversions, services, woods, tithes, pensions, portions, parsonages, appropriated vicarages, churches, chapels, advowsons, nominations, patronages, annuities, rights, interests, entries, conditions, commons, leets, liberties, privileges, and other hereditaments whatsoever which appertained and belonged to the said monasteries, abbottries, priories, nunneries, colleges, hospitals, houses of friars, and other religious and ecclesiastical houses and places, or to any of them, in as large and ample

Prut pater;

by virtue where-
 of prior became
 seised.

In the 13th
 Henry 8th prior
 surrendered to
 the king.

Statute of
 31. Henry 8th.

ample manner and form as the late abbots, priors, abbeſſes, prioceſſes, or other eccleſiaſtical governors or governeſſes of ſuch late monaſteries, priories, nunneries, colleges, hoſpitals, houſes of friars, and other religious and eccleſiaſtical houſes and places, at the time of the ſaid diſſolution, ſuppreſſion, renouncing, relinquishing, forfeiting, giving up, or by any other manner of means coming of the ſame to the ſaid king's highneſs ſince the fourth of February above ſpecified; and it was further enacted by the authority laſt aforeſaid, that not only all the ſaid late monaſteries, abbotties, priories, nunneries, colleges, hoſpitals, houſes of friars, and other eccleſiaſtical and religious houſes and places, leets, circuits, precincts, manors, granges, lordſhips, meſſuages, lands, tenements, meadows, paſſures, rents, reverſions, ſervices, woods, tiſhes, penſions, portions, parſonages, appropriate vicarages, churches, chapels, advowſons, nominations, patronages, annuities, rights, intereſts, entries, conditions, commons, leets, courts, liberties, privileges, franchiſes, and other hereditaments whatſoever, that ſhould be belonging or appertaining to the ſame or any of them, whenſoever ſo ſoon as they ſhould be diſſolved, ſuppreſſed, renounced, relinquished, forfeited, given up, or by any other means come unto the ſaid king's highneſs, ſhould be deemed, veſted, and adjudged by the authority of that parliament in the very actual and real ſeiſin of the ſaid king, his heirs and aſſigns for ever, and as though all the ſaid eſtates, monaſteries, abbotties, priories, nunneries, colleges, hoſpitals, houſes of friars, and all other religious and eccleſiaſtical houſes and places ſo diſſolved, ſuppreſſed, renounced, relinquished, forfeited, given up, or by any means come unto the ſaid king's highneſs as aforeſaid, as alſo the ſaid monaſteries, abbotties, priories, nunneries, colleges, hoſpitals, houſes of friars, and other religious and eccleſiaſtical houſes and places, which thereafter ſhould happen to be diſſolved, ſuppreſſed, renounced, relinquished, forfeited, given up, or come unto the ſaid king's highneſs, leets, circuits, precincts, manors, lordſhips, granges, lands, tenements, and other premises whatſoever, they be, and every of them were in that act ſpecially and particularly rehearſed, named, and expreſſed by expreſs words, names, titles, and faculties, and in their names, kinds, and qualities, as by the ſaid act (among other things) it more fully appears; by force of which ſaid act and by virtue of the ſaid deed of grant and ſurrender the ſaid king Henry the Eighth became and was ſeiſed of the ſaid one thouſand acres of land, with the appurtenances, whereof, &c. and of the ſaid free warren in and over the ſaid land in his demefne as of ſee in right of his crown of England; and the ſaid late king Henry the Eighth being ſo ſeiſed of ſuch his eſtate therein, died ſeiſed at Weſtmiſter aforeſaid, after whoſe death the ſaid one thouſand acres of land, with the appurtenances, whereof, &c. deſcended to Edward the Sixth, late king of England, as ſon and heir of the ſaid king Henry the Eighth, where by the ſaid late king Edward the Sixth became and was ſeiſed of the ſaid one thouſand acres of land, with the appurtenances, whereof, &c. in his ſaid demefne

Prout patet.

Henry 8th ſeiſed
of the ſaid 1000
acres,

and died ſeiſed.

Said 1000 acres
deſcended to
Edward the 6th,
who became
king Edward the
6th.

demefne as of fee in right of his crown of England; and being so and died seised.
 thereof seised the said late king Edward the Sixth of such his estate
 therein died seised, at Westminster aforesaid, after whose death
 the said one thousand acres of land, with the appurtenances, where-
 of, &c. descended to the lady Mary, late queen of England, as Said 1000 acres
descended to
queen Mary,
 sister and heir to the late king Edward the Sixth, whereby the said
 late queen Mary became and was seised of the said one thousand
 acres of land, with the appurtenances, whereof, &c. in her demefne
 as of fee in right of her crown of England; and being so who became
seised,
 seised thereof the said queen Mary afterwards, at Westminster
 aforesaid, died seised of such her estate therein, after whose death
 the said one thousand acres of land, with the appurtenances, where-
 of, &c. descended to the lady Elizabeth, late queen of England, Said 1000 acres
descended to
queen Elizabeth,
who became
seised.
 as sister and heir to the said late queen Mary, whereby the said late
 queen Elizabeth became and was seised of the said one thousand
 acres of land, with the appurtenances, of, &c. in her demefne
 as of fee in right of her crown of England; and the said late
 queen Elizabeth being so seised afterwards, by her letters patent
 sealed with the great seal of England, bearing date at Westmin-
 ster, the seventeenth day of October, in the thirty-second year of
 her reign (which letters patent the said sir Theophilus now brings
 here into court, the date whereof is the same day and year in that
 behalf above-mentioned), for the considerations therein mention-
 ed, for herself and her heirs, gave and granted to Thomas Thorn-
 ton and Thomas Woodcock all her manor of Frankton, with its
 rights, members, and appurtenances, in the said county of War-
 wick, and all her lands, tenements, hereditaments, with the ap-
 purtenances belonging and appertaining, parcel of the said manor,
 situate in Frankton aforesaid, theretofore belonging and appertain-
 ing to the said priory of the Blessed Virgin Mary, in the said city of
 Coventry, and having been formerly part of the possession thereof,
 and also all free warrens, rights, privileges, profits, commodi-
 ties, emoluments, and hereditaments whatsoever, of what kind,
 nature, or species, by whatever name known, reputed, called or
 distinguished, being, coming, growing, and arising within the afore-
 said manor, lands, tenements, and other premises, above granted
 as last aforesaid, or belonging to any of them, or theretofore
 had, taken, used, or reputed as members, parts, or parcels of the
 same manor, lands, tenements, and other premises so granted, or
 any of them: And the said queen Elizabeth by her said letters
 patent did further give and grant for herself, her heirs, and suc-
 cessors, to the said Thomas Thornton and Thomas Woodcock,
 their heirs and assigns, that they, their heirs and assigns, should
 from thenceforth be ever empowered to have, hold, and enjoy
 within the aforesaid manor, lands, tenements, premises before
 granted, and in any parcel thereof, so many, of such extent, and
 such and the same free warrens, and all other rights, franchises,
 liberties, privileges, customs, profits, emoluments, and heredita-
 ments whatsoever, as, and so such, and so fully, freely, and entirely, and
 in such ample manner and term as any prior or priors of the said

late priory of the Blessed Virgin Mary of the city of Coventry aforesaid, or any other person or persons theretofore having, possessing, or being seised of the said manor, lands, tenements, and premises therein before granted, had, held, used, and enjoyed, or ought to have had, held, used, and enjoyed the said premises, or any part thereof, by reason of the pretext of any charter, gift, grant in confirmation by the said queen Elizabeth, or any of her progenitors, made, granted, or confirmed, or otherwise by any lawful means or titles, and as freely and perfectly, and in as ample manner and form as all and singular the said premises came, or ought to have come, into her hands, or into the hands of her said father and mother, brother Henry the Eighth, and Edward the Sixth, or the hands of either of them, or her said sister Mary, by reason of the pretext of the dissolution or surrender of the said late priory, or by reason of any exchange or purchase, or of any act or acts of parliament, or by any other legal means, right, or title whatsoever, and as the same then were, or ought to have been in her said majesty's hands, to hold all and singular the said premises to the said Thomas Thornton and Thomas Woodcock, and their heirs and assigns, and to their own use and benefit for ever, to be holden of the said queen Elizabeth, her heirs and successors, as of her majesty's honour of Hampton Court, in the county of Middlesex, by knights services, and not *in capite*, viz. by the twentieth part of one knight's fee for all rents, services, and demands whatsoever, to be paid and performed for the said premises to her said majesty, her heirs and successors, in any part, as by the same letters patent, relation being thereunto had, it more fully appears; by virtue of which said letters patent the said Thomas Thornton and Thomas Woodcock became and were seised in their demesne as of fee of and in the said manor of Frankton, and the said one thousand acres of land, with the appurtenances, whereof, &c. also of and in the said free warren in and over the same lands; and being so thereof seised the said Thomas Thornton and Thomas Woodcock afterwards, to wit, on the twenty-fifth day of October, in the twenty-third year of the reign of the said late queen Elizabeth aforesaid, by a certain indenture then and there made between the said Thomas Thornton and Thomas Woodcock of the one part, and John Temple, of Stowe, in the county of Buckingham, esquire, of the other part, and in the court of chancery of the said late queen Elizabeth, within six months then next following, at Westminster aforesaid, in due form of law of record enrolled according to the form of the statute in such case made and provided (one part of which said indenture, sealed with the seals of the said Thomas Thornton and Thomas Woodcock, the said sir Theophilus now brings here into court, the date whereof is the same day and year in that behalf above-mentioned), in consideration of a certain sum of money paid by the said John Temple to the said Thomas Thornton and Thomas Woodcock, bargained and sold to the said John Temple the said manor of Frankton, and all the lands, tenements, and hereditaments contained

Prout patet, &c.
T. T. and T.
W. became seised.

T. T. and T.
W. bargained
and sold the
manor to J. T.

tained in the aforesaid grant of queen Elizabeth, being part of the said manor situate in Frankton aforesaid, and all lands, tenements, warrens, franchises, liberties, profits, and hereditaments whatsoever to the said manor or premises belonging, or reputed to be parcel thereof, or which were granted and conveyed to the said Thomas Thornton and Thomas Woodcock by the said grant from the said queen Elizabeth, to hold the said premises to the said John Temple, his heirs and assigns for ever; by virtue of which said bargain and sale, and inrollment, and also by force of the statute made for transferring uses into possession, the said John Temple became and was seised in his demesne as of fee of and in the said manor and one thousand acres of land, whereof, &c. with the appurtenances, and also of and in the said free warren of and in the same; and being so possessed thereof the said John Temple afterwards, to wit, on the first of April 1650, at Frankton, aforesaid, died seised of such his estate therein, after whose death the said manor and the said free warren in and over the said one thousand acres of land, whereof, &c. with the appurtenances, descended and came to Thomas Temple, esquire, as son and heir of the said John Temple, whereby the said Thomas Temple became and was seised in his demesne as of fee of and in the said manor and the said free warren in and over the said one thousand acres of land, whereof, &c. with the appurtenances; and being so seised the said Thomas Temple afterwards, to wit, on the first day of April 1680, at Frankton aforesaid, died seised of such his estate therein, after whose death the said manor and the free warren in and over the said one thousand acres of land, with the appurtenances, whereof, &c. descended and came to Richard Temple, esquire, as son and heir of the said Thomas Temple; whereby the said Richard Temple became and was seised in his demesne as of fee of and in the said manor and the said free warren in and over the said one thousand acres of land, whereof, &c. with the appurtenances; and the said Richard Temple being so thereof seised, afterwards, to wit, on the twenty sixth day of August 1680, at Frankton aforesaid, by a certain indenture then and there made between the said Richard Temple of the one part, and sir Theophilus Biddulph, baronet, of the other part, in the court of chancery of the late king Charles the Second, within six months then next following, at Westminster aforesaid in due form of law inrolled of record, according to the form of the statute in such case made and provided (one part of which said indenture, sealed with the seal of the said Richard Temple, the said sir Theophilus the defendant brings here into court, the date whereof is the same day and year last aforesaid), in consideration of a certain sum of money paid by the said sir Theophilus in that indenture named, bargained and sold to the said sir Theophilus Biddulph in the said indenture named the said manor of Frankton, and all and every the lands, tenements, hereditaments, and free warren, late of the said Thomas Temple, in Frankton aforesaid, and all the estate, right, and title of the said Richard Temple of and unto the said manor and premises, to hold

Statute of uses.

J. T. died seised.

Manor, &c. descended to J. T. his heir, who became seised,

and died seised.

Manor descended to R. T.

who became seised.

R. T. bargained and sold the manor, &c. to sir T. B.

Prout patet, &c.
Statute of uses.

Sir T. B. died
seised.

The said manor
descended to Sir
T. B. his son,

who became
seised,

and died seised.

The said manor
descended to the
defendants,

who became
seised;
wherefore, &c.

to the said Sir Theophilus Biddulph in that indenture named, his heirs and assigns, to the use of the said Sir Theophilus Biddulph, his heirs and assigns for ever, as by the said indenture, relation being thereunto had, it may more fully appear; by virtue of which said indenture, and by force of the statute made for transferring of uses into possession, the said Sir Theophilus Biddulph in that indenture named became and was seised of and in the said manor and free warren in and over the said one thousand acres of land, whereof, &c. with the appurtenances, in his demesne as of fee; and being so thereof seised, the said Sir Theophilus last above-mentioned afterwards, to wit, on the first of May 1700, at Frankton aforesaid, died seised of such his estate therein, after whose death the said manor and free warren in and over the said one thousand acres of land, whereof, &c. with the appurtenances descended and came to Sir Theophilus Biddulph, as son and heir of the said Sir Theophilus Biddulph in the last-mentioned indenture named, whereby the said Sir Theophilus, the son and heir of the said Sir Theophilus in the said last-mentioned indenture named, become and was seised in his demesne as of fee of and in the said manor and the said free warren in and over the said one thousand acres of land, whereof, &c. with the appurtenances; and being so seised thereof the said Sir Theophilus Biddulph last-mentioned afterwards, and before the said time when, &c. to wit, on the first of June 1720, at Frankton aforesaid, died seised of such his estate therein, upon whose death the said manor and free warren in and over the said one thousand acres of land, whereof, &c. with the appurtenances, then and there descended to the said Sir Theophilus Biddulph, to wit, as son and heir of Edward Biddulph, deceased, who was son and heir of the said Sir Theophilus Biddulph in the said last-mentioned indenture named, the father of the said Sir Theophilus the defendant, became, was, and yet is seised of and in the said manor and free warren in and over the said one thousand acres of land, whereof, &c. with the appurtenances; wherefore the said Sir Theophilus the defendant being so seised thereof at the said several times when, &c. with the said dogs in the said declaration mentioned, entered on the said horse, part of the said cattle in the said declaration mentioned, to use his free warren there, and with his said dogs hunted the game in the said closes, parcel, &c. in which, &c. as he lawfully might for the cause aforesaid, and in so doing he the said Sir Theophilus the defendant necessarily and unavoidably with his feet in walking trod down, trampled upon, consumed, and spoiled a little of the grass there then growing, and with his said horse trod, spoiled, and consumed a little of the grass there then also growing in pursuit of the said game, and with the feet of his said dogs by such hunting tore up, damaged, and spoiled a little other grass then and there also growing, he the said Sir Theophilus the defendant doing as little damage on that occasion as he possibly could, which are the same, &c. whereof, &c.; and this, &c.; wherefore, &c.

THOMAS WALKER.

And

And the said Edmund, as to the said plea of the said sir Theophilus by him secondly above pleaded in bar as to the breaking, &c. (*procludi non*); because he says, that long before the said sir Theophilus had any thing in the said manor of Frankton, with the appurtenances, or in the said warren in and over the said manor, to wit, on the third day of June 1658, one Thomas Temple, esquire, was at one and the same time seised of and in the said manor of Frankton, with the appurtenances, in the said county of Warwick, and of and in the said closes in which, &c. parcel, &c. and of and in the said free warren in and over the said manor, and in and over the said closes in which, &c. parcel, &c. in his demesne as of fee; and being so seised thereof a certain fine was levied in the court of our lord the late king Charles the Second of common bench at Westminster, from the day of the Holy Trinity in three weeks, in the year of Our Lord 1758, before Oliver Saint John, Edward Atkins, Michael Hale, and Hugh Wyndham, justices and others then and there present, between Theophilus Bidulph, esquire, and Euseby Dormer, esquire, plaintiffs, and the said Thomas Temple and Rebecca his wife, defendants, of the said closes in which, &c. (amongst other things) with the appurtenances, by the name and description of one messuage, one garden, one orchard, two hundred and fifty acres of land, thirty acres of meadow, thirty acres of pasture, and forty acres of furze and heath, with the appurtenances, in Frankton; whereupon a plea of covenant was submitted between them in the same court, that is to say, that the aforesaid tenements, with the appurtenances, to be the right of and the said sir Theophilus, as those which the said sir Theophilus and Euseby had of the gift of the aforesaid Thomas and Rebecca, and those they had remised and quit claimed from them the said Thomas and Rebecca, their heirs, to the aforesaid Theophilus and Euseby, and to the heirs of the said sir Theophilus for ever; and moreover the said Thomas and Rebecca had granted for them and the heirs of the aforesaid Theophilus, that they would warrant to the aforesaid Thomas and Euseby, and the heirs of the said Theophilus, the aforesaid tenements, with the appurtenances, against the said Thomas and Rebecca, and the heirs of the aforesaid Thomas for ever, as by the record of the said fine being in the said court of the said lord the king of the bench, at Westminster aforesaid, more fully appears: And the said Edmund further says, that the said fine was so levied to the use and behoof of the said sir Theophilus and Euseby Dormer, and their heirs for ever, to wit, at Frankton aforesaid; by virtue of which said fine, and of the statute for transferring uses into possession, the said Theophilus and Euseby Dormer were seised of the said closes in which, &c. with the appurtenances, in their demesne as of fee; and the said Theophilus and Euseby Dormer being so seised, afterwards, and long before the said several times when, &c. and long before the said sir Theophilus had any thing in the said manor and free warren, to wit, on the twenty-second day of November 1658, at Frankton aforesaid, in the said county, demised to one J. Cartwright (amongst

Replication, that before the defendant had any thing in the manor, &c. one T. T. in 1658, was seised in &c.

A fine levied of *heirs in quo* by said T. T. and Rebecca his wife to T. B. and E. D.

Prout patet, &c.

Uses of the fine.

And before the defendant had any thing T. B. and E. D. demised *locus in quo* to J. C.

TRESPASS.—REPLICATION.

(amongst other things) all and singular the said closes in the said declaration mentioned, in which, &c. with the appurtenances, to him the said John Cartwright, his executors, administrators, and assigns, for and during the term of five hundred years from thence next ensuing, and fully to be complete and ended; by virtue whereof the said John Cartwright afterwards, to wit, on the same day and year last aforesaid, entered into the said demised premises, with the appurtenances, and became and was possessed for the said term to him thereof demised as

J. C. possessed, and died intestate. aforesaid; and the said John Cartwright became so possessed thereof as aforesaid afterwards, to wit, on the thirteenth of September 1690, at Frankton aforesaid, in the said county, and died intestate, after whose death, to wit, on the nineteenth day of December 1692, at Frankton aforesaid, in the said county, administration of all and singular the goods and chattels, rights and credits which were of the said John Cartwright at the time of his death, who died intestate as aforesaid, to Thomas Cartwright, by John, by Divine Providence, archbishop of Canterbury, and primate of all England, to whom the granting of administration of right belonged, was in due form of law committed; by virtue whereof the said Thomas Cartwright afterwards, to wit, on the same day and year last aforesaid, entered into the said demised premises, with the appurtenances, and became and was possessed thereof for the then residue of the said term therein to come and unexpired; and the said T. C. being so possessed thereof afterwards, to wit, on the thirtieth of September 1697, at F. aforesaid, in the said county assigned his interest to the said demised premises, with the appurtenances, in which, &c.

T. B. and all the estate, right, title, and interest of the said Thomas Cartwright of and in the same for the residue of the said term of five hundred years therein then to come and unexpired to Richard Benson; and the said Richard Benson being so thereof possessed as last aforesaid, afterwards, to wit, on the first of August 1718, at Frankton aforesaid, in the said county, died intestate, after whose death, to wit, on the nineteenth of August 1718, at Frankton aforesaid, administration of all and singular the goods and chattels, rights and credits which were of the said Richard Benson at the time of his death, who died intestate as aforesaid, to Richard Benson the son of the said Richard Benson, first named, by William, by Divine Providence, archbishop of Canterbury, and primate of all England, to whom granting of that administration of right belonged, was in due form of law committed; by virtue whereof the said Richard Benson the son, being so possessed afterwards, to wit, on the day and year last aforesaid, at Frankton aforesaid, entered into the said demised premises, with the appurtenances, in which, &c. and became and was possessed thereof for the residue and remainder of the said term therein to come and unexpired; and the said Richard Benson the son being so possessed thereof afterwards, to wit, on the third of November 1720, at Frankton aforesaid, in the said county, assigned the said demised premises, with the appurtenances, for the residue and remainder of the said term

500 year, mortgaged.

Administration granted to T. C.

who died intestate.

Administration granted to R. B.

R. B. assigned the remainder to T. H.

of five hundred years therein to come and unexpired to one Thomas Hewit; by virtue whereof the said Thomas Hewit afterwards, to wit, on the same day and year last aforesaid, entered into the said demised premises, with the appurtenances, in which, &c. and became and was possessed thereof for the residue of the said term therein then to come and unexpired; and the said Thomas Hewit being so possessed thereof as last aforesaid, afterwards, to wit, on the twenty-third of September 1737, at Frankton aforesaid, in the said county, duly made his last will and testament in writing, and thereby gave and devised the said last-mentioned premises, with the appurtenances, in which, &c. to Thomas Hewit, the nephew of him the said Thomas Hewit first named, the same to him the said Thomas Hewit the nephew, for and during the term of his natural life, and from and after the decease of Thomas Hewit the nephew to the first son of the body of the said Thomas Hewit the nephew to be lawfully begotten, and the heirs of the body of such first son lawfully issuing, with divers remainders over, and appointed the said Thomas Hewit, the nephew, sole executor of the said will; and afterwards, to wit, on the thirty-first of January in the year last aforesaid, at Frankton aforesaid, in the year aforesaid, died so possessed of and in the said demised premises, with the appurtenances, in which, &c.; after whose death, to wit, on the sixth of February 1737, the aforesaid Thomas Hewit the nephew, the said execution duly proved the said will, and took upon himself the burthen of the execution thereof, to wit, at Frankton aforesaid; and afterwards, and after the death of the said Thomas Hewit, to wit, on the day and year last-mentioned, at Frankton aforesaid, in the said county, he the said Thomas Hewit, the nephew, as executor as aforesaid, assented to the said devise and bequest, and thereupon and by virtue of the said devise, bequest, and assent, he the said Thomas Hewit, the nephew, afterwards, to wit, on the same day and year last aforesaid, at Frankton aforesaid, in the said county, entered into and upon the said demised premises, with the appurtenances, and became and was possessed thereof, and during the term of his natural life, and being so thereof possessed afterwards, to wit, on the eighteenth of December 1753, at Frankton aforesaid, died, leaving Charles Hewit, the first son of the body of the said Thomas Hewit the nephew lawfully begotten; by virtue whereof the said Charles Hewit afterwards, to wit, on the same day and year last aforesaid, entered into the said demised premises, with the appurtenances, in which, &c. and became and was possessed thereof for the residue of the said term; and being so possessed thereof, he the said Charles Hewit afterwards, to wit, on the twenty-ninth of September 1782, demised the said premises in which, &c. with the appurtenances, unto the said Edmund, to have the same unto the said Edmund for and during the term of one whole year then next ensuing, and fully to be complete and ended, and so from year to year for so long a time as they the said Edmund and Charles Hewit should please; by virtue whereof the said Edmund afterwards and before the said

T. H. devised
same by will to
T. H. his ne-
phew.

to hold to him
and his first son,

and appointed
the said T. H.
his executor.

J. H. the uncle
and.

Executor proved
the will.

T. H. leaving
C. H. his first
son.

C. H. demised
same to plaintiff
as tenant from
year to year.

times when, &c. to wit, on the same day and year last aforesaid, at Frankton aforesaid, in the said county, entered into the said several closes in which, &c. with the appurtenances, and became and was thereof possessed until and at the said times when, &c. for the said term to him thereof demised, and being so possessed thereof, the said sir Theophilus, at the said times when, &c. of his own wrong broke and entered the said closes in the said declaration mentioned, and with his feet in walking trod down, trampled upon, consumed, and spoiled the grass and corn of the said Edmund there then growing, and with the said cattle depastured, trod down, consumed, and spoiled the said other grass and corn of the said Edmund there then also growing, and broke down, tore down, prostrated, and destroyed the said hedges and fences of and belonging to the said closes of the said Edmund, and with the said dogs hunted in the said closes there without the licence and against the will of the said Edmund, and with the feet of the said dogs by hunting tore, damaged, and spoiled the said other grass and corn of the said Edmund there then also growing, in manner and form as the said Edmund hath above in his declaration thereof complained against him; and this, &c.; wherefore, &c.: And the said Edmund, as to the said plea of the said sir Theophilus by him lastly above pleaded in bar as to the breaking and entering, &c. (*prohibet*); because protesting that the prior of the late dissolved priory or monastery of the Blessed Virgin Mary, in the city of Coventry, was not seised of one thousand acres of land in Frankton aforesaid, in his demesne as of fee in right of his priory or monastery, where the said closes in which, &c. were and still are parcel, protesting also that the said Henry the Third, late king of England, did not by his letters-patent grant and confirm to the said prior or convent of Coventry, that they and their successors for ever should have free warren in their demesne lands of Frankton aforesaid; protesting also that the said late queen Elizabeth did not grant to the said Thomas Thornton and Thomas Woodcock, their heirs and assigns, the manor of Frankton, and all its rights, members, and appurtenances, in the said county of Warwick, and did not give and grant to the said Thomas Thornton and Thomas Woodcock, their heirs and assigns, that they, their heirs, and assigns, from thenceforth should be empowered to have, hold, and enjoy within the said manor of Frankton, or any part thereof, so many, or such extent, and such and the same free warrens, and all other rights from divers liberties, privileges, customs, profits, emoluments, and hereditaments whatsoever as, and such and so freely and entirely, and in such ample manner and form as any prior or priors of the said late priory of the Blessed Virgin Mary of the city of Coventry, or other person or persons having, possessing, or being seised of the said manor, lands, tenements, and hereditaments had, held, used, or enjoyed, or ought to have held, used, or enjoyed in the said premises, or any part thereof; protesting also that the said Richard Temple in the said plea mentioned, was not seised in his demesne as of fee of

and

De injuria, &c.

Replication to the last plea.

Protesting that the prior was not seised.

Protesting that Hen. 3. did not grant letters patent.

Protesting that Queen Elizabeth did not grant to T. T. and T. W.

and in the said manor of Frankton, and of and in the said free warren in and over the said one thousand acres of land whereof, &c. with the appurtenances; protesting also that the said Richard Temple did not bargain and sell to the said sir Theophilus in that plea first mentioned, the said manor of Frankton, and all and every the lands, tenements, hereditaments, and free warren late of the said Thomas Temple in Frankton aforesaid, and all the estate, right, and title of the said Richard Temple of and in the said manor or premises, as the said sir Theophilus hath above in pleading alledged; protesting also that the said plea by him lastly above pleaded, and the matters therein contained, are not sufficient in law to bar or preclude the said Edmund from having and maintaining his aforesaid action thereof against him the said sir Theophilus; nevertheless for a replication in this behalf the said Edmund says, that long before the said several times when, &c. and long before the said sir Theophilus had any thing, &c. &c. [Verbatim as replication to second plea]; and this, &c.; wherefore, &c.

Protesting that R. T. was not seized.

Protesting that he did not sell to sir T. B.

Protesting in sufficiency.

Pleaded before.

GEO. WOOD.

RIGHT of WAY.

First, General Issue: And for further plea in this behalf as to all the trespasses in the said declaration mentioned, and above supposed to have been done by the said defendant, except the coming with force and arms, and whatsoever is against the peace of his present majesty, the said defendant, by leave, &c. says (*aditum*); because he says, that the said close in which, &c. in the first Count of the said declaration mentioned, and the said close in which, &c. in the second Count of the said declaration mentioned, are one and the same close, and not divers or different closes, and that the said several supposed trespasses in the first and second Counts of the said declaration mentioned, except the coming with force and arms, and whatever is against the peace of his present majesty, are the very same identical trespasses, and not divers or different trespasses, and that in, through, and over the said close in which &c. at the said several time when, &c. and long before there was, and yet is a certain common public highway leading from the village of Little Hampton, in the said county, to, through, and over the said close in which, &c. to the village of Washington in the said county, for all the liege subjects of our said lord the king to go, return, pass, and repass as well on foot as on horseback, and with their cattle, carts, waggons, and other carriages in and along the said public highway there from the said village of L. in the said county, in, through, and over the said close in which, &c.

Plea (for entering close, containing grass, and breaking down gates) that there is a common highway over *heus* to pass with horses and carts, and because the way was obstructed by the gates, defendant pulled them down.

to

to the said village of W. as it was lawful for him to do for the cause aforesaid, and in so doing the said defendant, at the said several times when, &c. with his feet in walking, and with the feet of the said cattle necessarily and unavoidably trod down, trampled upon, spoiled, and consumed a little of the grass then growing in the said close in which, &c. in the said highway there, and the said cattle at the said several times when, &c. in passing and repassing along the said highway through the said close of the said sir H. G. in which, &c. as aforesaid, against the will of the said defendant, snatched, eat up, and depastured a little of the grass there then growing, doing as little damage to the said close in which, &c. as might be on the occasion aforesaid, and with the said carts, waggons, and other carriages, crushed, squeezed, and spoiled a little other of the grass of the said sir H. in the said highway there, and ploughed up, turned up, and spoiled a little of the soil in the said highway there, doing as little damage as might be on the occasion aforesaid; and because at the said several times when, &c. the said hedges, fences, and gates were wrongfully erected, standing, and being in the said close in which, &c. across the said way there, and the said close in which, &c. across the said way there, and the said gates, at the said time when, &c. were wrongfully locked, fastened, and chained with the said locks, bars, iron bolts, and chains, and obstructed the said way there, so that the said defendants could not pass with the said cattle, carts, waggons, and carriages along the said highway there, he the said defendant, for having a necessary passage along and over the said highway at the said several times when, &c. did a little pull down, tear down, break to pieces, and destroy the said hedges, fences, and gates, and the said locks, iron bars, bolts, and chains wherewith the said last-mentioned gates were then and there locked and fastened, broke off, and wrenched from the said last-mentioned gates and the materials thereof coming, laid down at the side of the highway in the said close in which, &c. and left the same in a convenient place there for the use of the said sir H. doing as little damage as the said defendant possibly could, which are the several supposed trespasses in the said declaration mentioned, whereof the said sir H. hath above complained [except coming with force and arms, and whatever is against the peace of our present majesty]; and this, &c.; wherefore, &c.: And for further plea in this behalf as to all the trespasses in the said declaration mentioned, and above supposed to have been done by the said defendant (except, &c.) the said defendant, by leave, &c. (*ad id non*); because he says, that the said closes in which, &c. in the said first and second Counts of the said declaration mentioned, are one and the same close, and not other or different closes, and that the several and supposed trespasses in the said first and second Counts of the said declaration mentioned, except as are in this plea above excepted, are the very same identical trespasses, and not other or different trespasses: And the said defendant further says, that William Frankland, esquire, long before the said first time when, &c. and at the said several

several times when, &c. was and yet is seized in his demesne as of fee of and in a certain mansion-house, messuage, or tenement, and lands, with the appurtenances, called Manthoufe, situate, lying, and being in the parish of Fendon, in the county aforesaid, and that the said William, and those whose estates he hath, and at the said several times when, &c. had of and in the said manor, house, and tenement, and lands, with the appurtenances, from time whereof the memory of man is not to the contrary, have had and used, and been accustomed to have and use, and of right ought to have and use for himself and themselves, and his and their farmers and tenants, occupiers of the said mansion house, messuage, or tenement, and lands, with the appurtenances, for the time being, a certain way from the said messuage and mansion-house, lands, and tenements, with the appurtenances, called M. into, through, and over the said close called the Road, in which, &c. into a certain place called WASHINGTON, and so from thence back again into, through, and over the said road in which, &c. to the said mansion-house, &c. to go, return, pass, and repass on foot, and with his and their cattle, waggons, carts, and carriages every year at all times of the year at his and their free will and pleasure, as belonging to the said mansion house, &c. and for enjoying, receiving, and taking the profits thereof, for which reason the said defendant, as the servant of the said William, and by his command at the said first time when, &c. and at the said several times when, &c. in the said declaration mentioned, having occasion to go that way, broke and entered the said close in the said declaration mentioned, and passed and repassed through and over the said close of the said sir H. on foot, and with the said cattle, and with carts, waggons, and other carriages on and along the said way there from the said mansion-house, &c. called M. in, through, and over the said close in which, &c. in the said declaration mentioned in the said way into the said place called WASHINGTON, and from thence back again in the said way unto the said mansion-house, &c. called M. using the said way for the purpose and on the occasion aforesaid, as it was lawful for him to do for the cause aforesaid, and in so doing the said defendant, as the tenant of the said William, at the said several time when, &c. with his feet in walking, &c. &c. [Same as second plea to the end]

W. F. seized in fee of a messuage.

Prescription for a right of way over locus in quo, as well on foot as for horses and carriages.

THO. WALKER.

And the said sir Harry, as to the said plea of the said defendant by him secondly above pleaded in bar as to the breaking, &c. says, that by reason of any thing in that plea alledged (*precludi non*); because he says, that the said defendant, at the said several times when, &c. of his own wrong broke and entered the said closes in the said declaration mentioned, and with his feet in walking trod down, trampled upon, spoiled, and consumed the said grass there growing, and with the said cattle eat up, depastured, spoiled, and consumed the said other grass there growing, and with the said carts, waggons, and other carriages crushed, squeezed, and spoiled the said other grass of the said sir H. there, and ploughed up, turned up, and spoiled

Replication.

Defendants, &c. injuria, &c.

Traverse of locus
in quo being a
common high-
way.

To 3d Plea.

De injuria, &c.

Traverse of right
of way.

spoiled the said grafs of the said fir H. there, and turned up, ploughed, and spoiled the said grafs, and broke down, prostrated, and destroyed the said hedges, gates, and fences in the said declaration mentioned, and the said locks, bars, bolts, and chains wherewith the said were locked and fastened, broke off, and wrenched in manner and form as the said fir H. hath above thereof complained against him; without this, that in, through, and over the said close in which, &c. at the said several times when, &c. and before then was and yet is a certain common public highway leading from the village of L. in the said county, into, through, and over the said close in which, &c. to the village of W. in the said county, for all the liege subjects of our said lord the king to go, return, pass, and repass as well on foot as on horseback, and with their cattle, carts, waggons, and other carriages in and along the said highway in the said close in which, &c. at all times, at their free will and pleasure, as the said defendant hath in his plea secondly above pleaded in bar alledged; and this, &c.; wherefore, &c.: And the said fir H. as to the said plea of the said defendants by him lately above pleaded in bar, as to the breaking, &c. (*precludi non*); because he says, that the said defendant, at the said several times when, &c. of his own wrong broke, &c. &c. in manner and form as the said fir H. hath above thereof complained against them; without this, that the said William Franklin, and all those whose estates he hath, and at the said several times when, &c. had of and in the said mansion-house, &c. from time whereof, &c. have had and used, and been accustomed to have and use, and still of right ought to have and use for himself and themselves, and his and their farmers and servants, occupiers of the said mansion-house, &c. called M. into, through, and over the said close called the Road, in which, &c. into a certain place called W. and so from thence back again in, through, and over the said close called the Road in which, &c. unto the said mansion-house, &c. called M. to go, pass, and repass on foot, and with his and their cattle, waggons, carts, and carriages every year at all times of the year at their will and pleasure, as belonging and appertaining to the said mansion-house, &c. and for enjoyment, receiving, and taking the profits thereof, as the said defendant hath in his said plea lately above pleaded alledged; and this, &c.; wherefore, &c.

F. BULLER.

Plea,
that there is a
public highway
for all the king's
subjects over lo-
cus in quo.

First, General Issue: And for further plea as to the breaking and entered the said close in which, &c. and with feet in walking treading down, spoiling, and consuming the grafs there lately growing, and with cattle spoiling and consuming other the grafs there lately growing, and turning up, subverting, and spoiling the soil there above supposed to have been done by the said defendants, they the said defendants, by leave, &c. (*actio non*); because they say, that in, through, and over the said close in which, &c. there now is, and at the said several times when, &c. was, and from time whereof,

whereof, &c. there hath been a common highway for all the liege subjects of this kingdom to go, pass, and repass on foot, on horseback, and with cattle, at all times of the year at their free will and pleasure from the common highway in the parish of Sherford aforesaid leading from Kingsbridge to Dartmouth, in the said county, and so back again from Modbury aforesaid to the said last-mentioned common highway; wherefore the said defendants being liege subjects of this kingdom at the said several times when, &c. went, returned, passed, and repassed in, through, and over the said close in which, &c. on the said highway there on foot and on horseback, and with cattle in the said declaration mentioned from the said highway leading from Kingsbridge to Dartmouth aforesaid to Modbury aforesaid, and back again from Modbury aforesaid to the said last-mentioned highway, as it was lawful for them to do for the cause aforesaid, and in so doing they necessarily and unavoidably at the said several times when, &c. troddown, spoiled, and consumed a little of the grass then growing in the said close in which, &c. in the said way there, with their feet in walking, and a little other of the grass then growing in the said close in which, &c. in the said way there with cattle spoiled and consumed, and the soil in the said close in which, &c. in the said way there with the said carriages a little tore up and subverted, and the said cattle in passing and repassing in and along the said way by health and morsels, and against the will of the said defendants spoiled, eat, and consumed a little other of the grass growing in the said way and on the sides thereof, doing as little damage to the said John Henry on that occasion as they possibly could, which are the same, &c. whereof, &c.; and this, &c.; wherefore, &c.:

[Third Plea, to Götan instead of Modbury]: And for further ^{ad Plea.} plea as to the breaking, &c. above supposed to have been done by ^{2nd Plea.} the said defendants, they the said defendants, by like leave, &c. (*actio non*); because they say, that the said Jacob, long before ^{Defendant seized} the said first time when, &c. was, and from thenceforth hitherto ^{on divers closes.} hath been, and still is seised in his demesne as of fee of and in divers closes, to wit, one close called Loom's Park, one other close called Higher Furge Park, one other close called Lower Furge Park, one other close called Gratton, one Millfield, with the appurtenances, in the parish of Thurford aforesaid, and that he the said Jacob, and all those whose estate he now hath, and at the said several times when, &c. had of and in the said closes now of the said Jacob, with the appurtenances, from time whereof, &c. have had, and have used and been accustomed to have, and of right ought to have had, and yet of right ought to have for himself and themselves, his and their servants, a way from Modbury, in the said county, unto, into, through, and over the said close in which, &c. to the said closes now of the said Jacob, and so back again from the said closes now of the said Jacob to Modbury, to go, return, pass, and repass on foot, on horseback, and with cattle every year at all times of the year at his and their free will and pleasure, for the convenient use, occupation, and enjoyment of the said close now

Prescription for a way over closes to the closes for their enjoyment.

TRESPASS.—REPLICATION—

of the said Jacob; and the said Jacob being so seised of the said closes, with the appurtenances, and so entitled to use the said way as aforesaid, he the said Jacob in his own right, and the said John and James, as the servants of the said Jacob, and by his command as the said several times when, &c. passed and repassed on foot and on horseback, and with the said cattle from Modbury aforesaid into, throughout, and over the said close in which, &c. in the same last-mentioned way unto the said closes of the said Jacob, and back again from the said closes of the said Jacob to Modbury aforesaid, for the convenient and necessary use, occupation, and enjoyment of the said closes using the said last-mentioned way as it was lawful for them to do, and in so doing they necessarily and unavoidably, &c. &c. (as before) which are the same, &c. whereof, &c.; and this, &c.; wherefore, &c.

GEO. WOOD.

Replication.

And the said plaintiff, as to the said plea of the said defendants by them secondly above pleaded in bar as to the breaking, &c. committed by the said defendants, says, that he by reason, &c. (*precludi non*); because he says, that the said defendants, at the said several times when, &c. of their own wrong broke and entered the said close in which, &c. and with feet in walking trod down, spoiled, and consumed the grass there lately growing, and tore up, subverted, and spoiled the soil there in the said declaration mentioned, as the said plaintiff hath above thereof complained against them;

De injuria sua
&c.

Traverse
highway.

of without this, that in, through, and over the said close in which, &c. there now is, and at the said several times when, &c. was, and from time whereof, &c. there hath been a common highway for all the liege subjects of this realm to go, return, pass, and repass on foot, and on horseback, and with cattle at all times of the year at their free will and pleasure from another common highway in the said parish of S. aforesaid, leading from Kingsbridge to Dartmouth, in the said county, to Modbury in the said county, and back again from Modbury aforesaid to the said last-mentioned highway, as the said defendants have in that plea alledged; and this, &c.; wherefore, &c.: [Traverse to third plea same as foregoing]: And the said plaintiff, as to the said plea of the said defendants by them lastly above pleaded in bar as to the breaking, &c. &c. committed by the said defendants, says, that he by reason, &c. (*precludi non*); because he says, that the said defendants, at the said several times when, &c. of their own wrong broke and entered, &c. &c.

To 4th Plea.

De injuria, &c.

Traverse of right
of way.

as the said plaintiff hath above complained against them; without this, that the said Jacob, and all those whose estate he now hath, and at the said several times when, &c. had of and in the said closes in plea mentioned, with the appurtenances, from time whereof, &c. have had, and have been used and been accustomed to have, and of right ought to have for himself and themselves, his and their servants, a way from Modbury, in the said county, unto, into, through, and over the said closes in which, &c. to the said closes of the said Jacob in that plea mentioned, and so back again from

NEW ASSIGNMENT.—REJOINDER.

from the said closes of the said Jacob in that plea mentioned to Modbury aforesaid, to go, return, pass, and repass on foot and on horseback, and with cattle every year at all times of the year at his and their free will and pleasure, for the convenient use, occupation, and enjoyment of the said closes of the said Jacob in that plea mentioned, as the said defendants have in their said plea by them lastly above pleaded in bar alledged; and this, &c.; wherefore, &c.: And the said plaintiff says, that he the said plaintiff brought his action aforesaid against the said defendants as well for the said trespasses by the said defendants above acknowledged to have been committed, as for that the said defendants at other times, on other occasions, and for other purposes than in the pleas mentioned, and also out of the said supposed ways in the said plea mentioned, broke and entered the said close of the plaintiff in the said declaration mentioned, and with their feet in walking trod down, spoiled, and consumed the grass of the said plaintiff there then lately growing to the value of five pounds, and with cattle, to wit, horses, &c. spoiled and consumed other the grass of the said plaintiff there then growing, to the value of other five pounds, and tore, subverted, and spoiled the soil, to wit, two hundred perches of the soil of the said plaintiff there, in manner and form as the said plaintiff hath above complained against them, which are other and different trespasses from the said trespasses by the said defendants secondly, thirdly, and lastly above pleaded in bar acknowledged to have been committed; and this, &c.; wherefore since the said defendants have not answered the said trespasses herein above newly assigned, the said plaintiff prays judgment and his damages, by reason of the committing thereof, to be adjudged to him, &c.

New assignment.

WILLIAM KEMPE.

And the said defendants, as to the said plea of the said plaintiff by way of reply pleaded to the said plea of the said defendants by them secondly above pleaded in bar (as before) say, that through and over the said close in which, &c. there now is, and at the said several times when, &c. was, and from time whereof, &c. there hath been a common highway for all the liege subjects of this kingdom to go, return, pass, and repass on foot and on horseback, and with cattle at all times of the year at their free will and pleasure from another common highway in the parish of Sherford aforesaid, leading from Kingsbridge to Dartmouth, in the said county, to Modbury, in the said county, and back again from Modbury aforesaid to the said last-mentioned common highway, as the said defendants have in their said plea secondly above pleaded in bar alledged; and of this they put themselves upon the country, &c. [Take issue on two last traverses]: And the said defendants, as to the said trespass above newly assigned, say, that they are not guilty thereof, in manner and form as the said plaintiff hath above thereof complained against them; and of this, &c.

Rejoinder, issue on traverse.

Answer to new assignment.

GEO. WOOD.

SURRY,

Declaration for
breaking and en-
tering close, and
destroying fen-
ces, throwing
down gates, and
breaking staples,
locks, chains,
and hinges.

WILLIS } **SURRY**, to wit, Marmaduke Willis complains
against } of James Liptrot, clerk, being, &c.; for that the
LIPTROT. } said James, on the first day of January 1787, and
on divers other days and times between that day and the day of
exhibiting this bill, with force and arms broke and entered the
close of the said Marmaduke called the Farm Yard, at Egham, in
the said county of Surry, and with his feet in walking trod down
and consumed the grass of the said Marmaduke to the value of
forty shillings, there lately growing, and with certain cattle, to wit,
horses, mares, and geldings, eat up, trod down, and consumed
other grass of the said Marmaduke there lately growing to
the value of other forty shillings, and then and there prostrated
and threw down forty perches of the fences of the said Marmaduke
there lately standing and being, and then and there filled up and
destroyed forty perches of the ditches of the said Marmaduke there
lately being in the said close, and then and there broke open,
broke to pieces, and destroyed a certain gate of the said Marmaduke
there lately erected, and standing in the said close, and then
and there broke to pieces and destroyed the chain, lock, staples,
and hinges, to wit, one chain, one lock, two staples, and two
hinges of the said Marmaduke, then and there being affixed to
the said gate: And for that the said James, on the said first of
January 1787, and on divers other days and times between that
day and the day of exhibiting this bill, with force and arms broke
and entered one other close called the Scrub Nursery, at Egham,
in the said county of Surry, and with his feet in walking trod
down and consumed the grass of the said M. to the value of forty
shillings, there lately growing, and with certain cattle, to wit,
horses, mares, and geldings eat up, trod down, and consumed
other grass of the said M. there lately growing, to the value of
other forty shillings, and then and there prostrated and threw
down forty perches of the fences of the said M. there lately stand-
ing and growing in the said said last-mentioned close, and then
and there filled up and destroyed forty perches of the ditches of
the said M. there lately being in the said last-mentioned close, and
then and there broke open, broke to pieces, and destroyed a cer-
tain gate of the said M. there lately erected and standing in the
said last-mentioned close, and then and there broke to pieces and
destroyed the chain, lock, staples, and hinges, to wit, one chain,
one lock, two staples, and two hinges of the said M. then and
there being affixed to the said gate, and other wrongs to the said
M. against the peace of our said lord the king, and to the damage
of the said M. of twenty pounds; and therefore he brings suit,
&c. Pledges, &c.

Plea; 1st, ge-
neral issue.

And the said James, by Thomas Graham his attorney, comes
and denies the force and injury, when, &c. and says that
he is not guilty of the premises above laid to his charge, in
manner and form as the said M. hath above thereto complained
against him; and of this he puts himself upon the country, &c.:

And

RIGHT OF WAY—By PRESCRIPTION—(PRIVATE.)

And for further plea as to the breaking and entering the close called the Farm Yard, in which, &c. in the said first Count of the said declaration mentioned, and with his feet in walking treading down and consuming the grafs there lately growing, and with the said horses, mares, and geldings eating up, treading down, and consuming other the grafs there lately growing, and prostrating and throwing down the said fences there lately standing and being, and filling up and destroying the ditches lately being in the said close in which, &c. in the said 1st Count mentioned, and breaking open and breaking to pieces the said gate there lately erected and standing in the said close in which, &c. in the said first Count of the said declaration mentioned, and breaking to pieces the chain, lock, staples, and hinges then affixed to the said gate in the said first Count of the said declaration mentioned, and also as to the breaking and entering the said other close called the Scrub Nursery, in the said last Count of the said declaration mentioned, and with his feet in walking treading down and consuming the grafs there lately growing, and with the said horses, mares, and geldings eating up, treading down, and consuming other the grafs there lately growing, and prostrating and throwing down the fences there lately standing and being in the said last-mentioned close, and filling up and destroying the said ditches there lately being in the said last-mentioned close, and breaking open and breaking to pieces the said gate there lately erected and being in the said last-mentioned close, and breaking to pieces the said chain, locks, staples, and hinges there being affixed to the said last-mentioned gates, above supposed to have been committed by the said James, he the said James by leave of the court, &c. says, that he the said M. (*actio non*); because he says, that he the said James long before, and at the said first time when, &c. and continually from thenceforth hitherto hath been, and still is vicar of the parish church of Egham aforesaid, in the said county of Surry, and that he the said James long before and at the said several times when, &c. was, and continually from thenceforth hitherto hath been, and still is seised in his demesne as of freehold for and during the term of his natural life, as vicar of the said vicarage, of and in a certain close called Little Willsworth, situate and being in the parish of Egham aforesaid, in the said county: And the said James further says, that he the said James, and all and every his predecessors, vicars of the said vicarage for the time being, from time whereof the memory of man is not to the contrary, have had and have used, and been used and been accustomed to have and use, and during all the time aforesaid or right ought to have had and have used, and the said James, as vicar of the vicarage aforesaid, still of right ought to have and use for himself and themselves, his and their farmers and tenants, occupiers of the said close of him the said James for the time being, a certain way from and out of a certain public king's highway leading from London to Bagshot, in the said county of Surry, into, through, and along a certain way or lane there adjoining to the church-yard of the church of Egham, unto, into, through, and over the said

2d Plea, justification for a right of way through locus in quo, as vicar of E. from the highway to his freehold close called, &c.

Actio non; because defendant is vicar of Egham.

And defendant as vicar of E. aforesaid seised in his demesne as of freehold in a certain close called Willsworth.

Prescription by defendant as vicar aforesaid for a way on foot and on horseback, and with horses, &c. at all times from the king's highway over locus in quo unto Willsworth, and so back again.

close called the Farm Yard, in which, &c. in the said first Count of the said declaration mentioned, and unto, into, through, and over the said close called the Scrub Nursery, in which, &c. in the said last Count mentioned, unto and into the said close of the said James called Little Willsworth, and so back again from thence by the same way to the said public king's highway, to go, pass, and repass, on foot and on horseback, with his and their horses, mares, and geldings, at all times at his and their free will and pleasure, for the use, occupation, and enjoyment of the said close of the said James called Little Willsworth, and for the perception of the produce thereof, as to the same close of the said James, with the

And defendant being so seised of Willsworth as vicar of E. at said times when, &c. went, passed, &c. from said king's highway through locus in quo unto Willsworth and so back again, &c.

appurtenances, belonging and appertaining : And the said James further says, that he the said James being so seised of the last aforesaid close, as such vicar of the vicarage as aforesaid, at the said several times when, &c. in the said first and last Counts of the said declaration mentioned, went, returned, passed, and repassed with the said horses, mares, and geldings in the said declaration mentioned, then being the horses, mares, and geldings of the said James, from the public king's highway into, through, and along the said way or lane unto, into, through, and over the said close called the Farm Yard, in which, &c. in the said first Count of the said declaration mentioned, and unto, into, through, and over the said close called the Scrub Nursery, in which, &c. in the said last Count mentioned, unto and into the said close of the said James called Little Willsworth, and so back again from thence by the same way to the said public king's highway, the said James during those times using his said way there for the use, occupation, and enjoyment of his said close, as it was lawful for him to do, and in so doing he the said James, at the said several times when, &c. in the said first and last Counts mentioned, necessarily and unavoidably with his feet in walking, and with the feet of the said horses, mares, and geldings trod down and consumed a little of the grass lately growing in the said several closes in which, &c. in the said way there, the said horses, mares, and geldings in the said first and last Counts of the said declaration mentioned, at the said time in the said several times when, &c. in so passing and repassing in, through, and over the said several closes in which, &c. in the said first and last counts mentioned, and in the said way there by stealth and by morsels, and against the will of the said James, snatched, cropped, and eat a little other of the grass there growing in the said several closes in which, &c. in the said first and last Counts mentioned, in the said way there and

And because the way was obstructed by the gates in declaration mentioned, defendant pulled them down, &c.

on the sides thereof; and because the said way of him the said James in the said several closes in which, &c. in the said first and last Counts mentioned, at the said several times when, &c. in the said first and second Counts mentioned was stopped up and obstructed by the said fences, ditches, and gates, erected, standing, and being in the said several closes in which, &c. in the said first and last Counts mentioned, in and across the said way there, and the said gates were there then shut, locked, and fastened with the said chains,

PRIVATE)—REPLICATION—NEW ASSIGNMENT.

chains, locks, staples, and hinges, being affixed to the said gates in the said declaration mentioned, by means whereof the said James could not pass in and along the said way with the said horses, mares, and geldings of the said James as they had a right and then had occasion to do, he the said James at the said times when, &c. in the said first and last Counts mentioned, for the removal of the said obstruction, in order to open a necessary passage, and to use the same way with the said horses, mares, and geldings in the said declaration mentioned, did necessarily a little break open, and break to pieces a little of the said gates, and fill up and destroy a little of the said ditches, and prostrate and throw down a little of the said fences then and there erected, standing, and being in the said closes in the said declaration mentioned, and then and there necessarily a little broke to pieces the said chains, locks, staples, and hinges in the said declaration mentioned, affixed to the said gates in the said declaration mentioned, as it was lawful for him to do in the said cause aforesaid, and without the doing of which he the said James could not have, use, or enjoy the same way with the said horses, mares, and geldings of him the said James, which are the same trespasses in the introduction to this plea mentioned, whereof the said Marmaduke hath above complained against the said James; and this, &c.; wherefore, &c. F. BOWER.

And the said Marmaduke, as to the said plea of the said James secondly above pleaded, says, that he by reason of any thing in that plea alledged (*precludi non*); because he says, that he exhibited his said bill against the said James not only for the said trespass above confessed by the said plea to have been committed by the said James on the occasion in that plea specified, but also for that the said James, on the said first day of January, and on divers other days and times between that day and the day of exhibiting the bill of the said M. with force and arms broke and entered the said closes in the said declaration mentioned, and with his feet in walking, and with the cattle in the said declaration mentioned trod down and consumed the grass there growing of the value of twenty shillings, otherwise than in using the said way claimed by the said James in that plea; wherefore inasmuch as the said James has not made answer to the said trespass above new assigned, he the said M. prays judgment and his damages, on occasion of the said trespass new assigned, to be adjudged to him: And as to the breaking and entering the said closes in the said plea secondly above pleaded specified, and committing the said other trespass confessed by that plea to have been committed on the occasion in that plea specified, the said Marmaduke says, that (*precludi non*); because he says the said James of his own wrong committed the said trespass, in manner and form as the said M. has above complained against him; without this, that the said James [Same as in second plea] in manner and form as the said James has above in his said plea alledged; and this, &c.; wherefore he prays judgment and his damages, &c.

A. PALMER.

Replication,
new assignment,
that plaintiff
brought his ac-
tion not only for
trespasses con-
fessed, but also
for breaking the
close and tread-
ing down c in,
&c. otherwise
than in using
the said way.

And as to the
trespasses con-
fessed,

De injuria sua.

Traverse of right
of way.

Rejoinder, *non culp.* to new assignment.

Rejoinder to replication, issue on traverse.

And the said James, as to the said trespasses above newly assigned, and by him above supposed to have been committed, says, that he is not guilty thereof in manner and form as the said Marmaduke hath above thereof complained against him; and of this he puts himself upon the country, &c. : And the said James, as to the said plea of the said Marmaduke by him above in reply pleaded in bar as to the said several trespasses in the introduction to the said plea of the said James by him lastly above pleaded in bar mentioned by said James above supposed to have been committed, and thereby justified, says, that the said M. by reason of any thing therein alledged (*actio non*); because he the said James as before says, that he the said James [Same as in second plea to declaration], in manner and form as the said James has above in his said plea by him lastly above pleaded in bar alledged; and of this he puts himself upon the country, &c.

Drawn by MR. J. GRAHAM.

Plea (to trespass for entering close, pulling down rails, &c.) that the river T. is a common river for all the king's subjects, and that in *locus in quo* there is a certain path or way for the purpose of towing for all persons whomsoever passing and repassing with boats, barges, and other vessels up the said river, and with horses, mares, and geldings in the said towing path, for the purpose of the towing of the said boats, barges, and other vessels up the said river when and so often as they shall have had occasion so to do; by reason whereof they the said defendants, being subjects of our said lord the king, at the said several times when, &c. having occasion to tow certain boats, barges, and other vessels in and along the said towing path in the said close in which, &c. did for that purpose at the said several times when, &c. enter the said close in which, &c. on foot and with horses, mares, and geldings to tow the said boats, &c. up the said river, and then and there for that purpose did pass on foot and with the said horses, &c. in towing the said boats, &c. in and along the said towing path in which, &c. as it was lawful for them to do, and in so doing, &c. doing as little damage on that occasion as they possibly could; and because the said rails in the said declaration mentioned, at the said time when, &c. were wrongfully and unjustly set up and placed in the said close in which, &c. at the entrance into the same, and so greatly hindered and obstructed the said defendants from entering and coming into the said towing path in which, &c. with the said horses, &c. for the purpose aforesaid, in such manner

(ACTIO NON); because they say, that the said close of the said R. P. in which, &c. hath been contiguous and adjoining to the river of T. which said river of T. now is, and during all the time aforesaid hath been a common navigable river for all the king's subjects to pass and repass in and along the same with their boats, barges, and other vessels at all times at their free will and pleasure; And the said defendants further say, that in, through, and over the said close in which, &c. on that side thereof adjoining to the said river there now is, and from time whereof the memory of man is not to the contrary, there hath been a certain towing path for all persons whomsoever passing and repassing with boats, barges, and other vessels up the said river, to go and pass on foot and with horses, mares, and geldings in the said towing path, for the purpose of the towing of the said boats, barges, and other vessels up the said river when and so often as they shall have had occasion so to do; by reason whereof they the said defendants, being subjects of our said lord the king, at the said several times when, &c. having occasion to tow certain boats, barges, and other vessels in and along the said towing path in the said close in which, &c. did for that purpose at the said several times when, &c. enter the said close in which, &c. on foot and with horses, mares, and geldings to tow the said boats, &c. up the said river, and then and there for that purpose did pass on foot and with the said horses, &c. in towing the said boats, &c. in and along the said towing path in which, &c. as it was lawful for them to do, and in so doing, &c. doing as little damage on that occasion as they possibly could; and because the said rails in the said declaration mentioned, at the said time when, &c. were wrongfully and unjustly set up and placed in the said close in which, &c. at the entrance into the same, and so greatly hindered and obstructed the said defendants from entering and coming into the said towing path in which, &c. with the said horses, &c. for the purpose aforesaid, in such manner

as they then of right ought to have done, they the said defendants, at the said several times when, &c. pulled down the said rails so wrongfully and unjustly erected, set up, and placed in and upon the said entrance into the said towing path in the said close in which, &c. and so hindering and obstructing the said defendants from coming and entering into the said close in which, &c. with their horses, &c. as it was lawful for them to do for the cause aforesaid, and in so doing necessarily and unavoidably a little spoiled and destroyed the same, and took and removed the same from the place where the said rails had been so erected and set up, and there left the same for the use of the said R. P. the same being a proper and convenient place for that purpose, doing as little damage there as they possibly could on that occasion, which are the same, &c.; and this, &c.; wherefore, &c. if, &c.: And for further plea (actio non); because they say, that the said close in which, &c. now is, and at the said several times when, &c. and long before was contiguous and next adjoining on the east side thereof to a certain close of the said defendants called E. and that the said close called Lower S. in which, &c. from time whereof, &c. until the separation thereof hereafter mentioned was contiguous and next adjoining towards the north to a certain other close now called Upper S. that the same two closes during all the said time whereof, &c. have been, and still are adjoining to the river of T. which said river now and during all the time aforesaid hath been a common navigable river for all our lord the king's subjects to pass and repass in and along the same with their boats, &c. at all times at their will and pleasure: And the said defendants further say, that before the said time when, &c. to wit, on, &c. § at, &c. the said river of T. with great violence forced a channel or passage between the said close called the Upper S. and the said close called the Lower S. and separated and divided the one from the other, and afterwards, to wit, on, &c. at, &c. a certain dam was erected and made across the said channel or passage between the same two closes, which said dam afterwards, to wit, on, &c. at, &c. was forced and washed away, and the same two closes have ever since the said dam was so forced and washed away continued separate and divided, and a great current of water from the river hath ever since run and flowed through the same channel and passage between the same two closes, and the said close in which, &c. is now bounded and surrounded on all sides by the said river of T. and the said newly forced channel or passage respectively, save and except on that side of the close which is contiguous and next adjoining to the said close of the said defendants called, &c.: ¶ And the said defendants further say, that from time whereof, &c. there hath been and now is a certain towing path in and round the said close in which, &c. from the south east corner thereof to that part thereof next to the said close called Upper S. for all persons whatsoever passing and repassing with boats, &c. along the said river to go and pass on foot and with horses, &c. in the said towing path for the purpose of towing vessels along the said river.

2d Plea, that locus is adjoining to a close of the defendant's which are both adjoining to the river T. which is a common river, and this before the said time when, &c. the river overflowed and a dam was erected which was washed away, and the same closes have ever since been divided by water running from the river, and the ancient way for towing boats being thereby impassable defendants entered locus, the same being a convenient way, and because the rails were wrongfully, &c.

when and as often as they had occasion so to do: And the said defendants further say, "that from time whereof, &c. until the said channel or passage was forced as aforesaid between the said close in which, &c. and the said close now called the Upper S. and for a long time since, to wit, during the continuance of the said dam across the same channel or passage, there was a certain common way for all persons whatsoever having occasion to tow any boats, &c. up and along the said river to go and pass on foot and with horses, &c. to the said south east corner, for the purpose of towing up the said barges, &c. there, and towing the same along the said river T. round the said close in which, &c. to the said close now called Upper S.:" And the said defendants further say, that ever since the said dam has been so forced and washed away as aforesaid, the said ancient way into the said close in which, &c. hath been wholly obstructed and cut off by means of the force, violence, and depth of the said current flowing down the said channel or passage so as aforesaid forced and made through and between the said close called Lower S. in which, &c. and the said close now called Upper S. so that cattle cannot pass from the said close called Upper S. to the said close called Lower S. in the said common and ancient way there; wherefore inasmuch as the said close in which, &c. is surrounded on all sides by the said river T. and the said newly forced channel or passage respectively, save and except on that side thereof which is contiguous to the said close of said defendant called E. and forasmuch as ever since the said dam was so forced and washed away as aforesaid there has been no common way for persons passing with boats, &c. along the said river T. to go and pass on foot and with horses, &c. into the said close called Lower S. in which, &c. to the said south east corner thereof to the said towing path there, for the purpose of towing their said boats, &c. along the said river around the said close in which, &c. to the said close called Upper S. they the said defendants at the said several times when, &c. having occasion to go and pass into and along the said towing path in the said close in which, &c. on foot and with horses, &c. for the purpose of towing certain boats, &c. along the said river from the said south east corner thereof round the same close to the said close now called Upper S. did of necessity go and pass on foot and with horses, &c. from the said close called E. over a certain dam there into the said close of the said plaintiff, in which, &c. at the said south east corner thereof, and from thence into the said towing path there, the same being a proper and convenient way for that purpose, and nearest to the said towing path, and because the said rails and posts in the said declaration mentioned, at the said several times when, &c. were erected, fixed, and placed in the said close in which, &c. against the said dam there, so that the said defendants could not pass on foot and with their horses, &c. from the said close called E. over the said dam into the said close in which, &c. to the said towing path there, for the purpose of towing the said boats, &c. along the said river, did pull up and throw down the said posts and

and rails so erected, placed, and fixed there, and did thereby necessarily a little destroy the said posts and rails, and left the said posts, &c. in the said close in which, &c. near to the place where the same were so erected, &c. for the use of the said plaintiff, and did go and pass on foot, and with their horses, &c. in and along the said towing path in which, &c. for the purpose of towing the said boats, &c. along the said river, as it was lawful for them to do, and in so doing, &c. which are the same, &c. whereof, &c.; and this, &c.; wherefore, &c. if, &c.: And for further plea in this behalf as to the breaking, &c. (*actio non*); because they say, that the said close in which, &c. now is, and at the said several times when, &c. and long before was contiguous and next adjoining on the east side thereof to a certain close of the said defendants called E. and that the said close called Lower S. in which, &c. from time whereof, &c. until the separation thereof hereafter mentioned, was contiguous and next adjoining towards the north to a certain close now called Upper S. and that the same two closes, at the time of the separation thereof hereafter mentioned, and long before, were, and from thence hitherto have been and still are contiguous and next adjoining to the river of T. the same being, and during all the time aforesaid having been a common navigable river for all our lord the king's subjects to pass and repass in and along the same with boats, &c. at all times at their will and pleasure; by reason whereof every subject of this realm passing along the said river T. with his boats, &c. at the said several times when, &c. had, and of right ought to have had, and yet ought to have the liberty and privilege of going and passing on foot, and with horses, &c. in, along, and through the said close in which, &c. on that side thereof adjoining to the said river T. for the purpose of towing their said boats, &c. along the said river T. the same during all that time having been an usual and accustomed towing path for that purpose: And the said defendants further say, that long before the said time when, &c. to wit, on, &c. at, &c. [Same as in second Plea from § to ||]: And the said defendants further say, that the usual and accustomed way and entrance into the same close in which, &c. until the said channel or passage was so forced as aforesaid, the said close in which, &c. and the said close called Upper S. and for a long time since, to wit, during the continuance of the said last-mentioned dam across the said channel the passage was through and from the said close now called Upper S. but since the said dam hath been so forced and washed away as last aforesaid, the same way has been wholly cut off and rendered impassable by the force, violence, and depth of the current running between the same two closes; wherefore inasmuch as there hath not been ever since the said last-mentioned dam hath been so forced and washed away, any other way or entrance into the said close in which, &c. but from the said close of the said defendants called E. so as aforesaid being contiguous to the said close in which, &c. they the said defendants being subjects of this realm, and having occasion to tow boats, &c. along the said river of T. in order to gain a necessary way and passage into the said close in which,

which, &c. for the purpose of towing the said boats, &c. up the said river, as it was lawful for them to do for the cause aforesaid, did at the said several times when, &c. enter into the said close in which, &c. on foot and with horses, and from the said close of the said defendants called E. over a certain dam there, the same being a proper and convenient way for that purpose, did pass along, through, and over the said close in which, &c. on that side thereof adjoining to the said river T. in the usual towing path there, and did tow the said boats, &c. up the said river as it was lawful for them to do for the cause aforesaid, and in so doing, &c.; and because the said posts and rails, &c. [As in second plea]; and this, &c.; wherefore, &c. if, &c.

W. H. ASHURST.

Replication,
new assignment
to first plea.

New assignment to the first plea, that the trespass was done and committed at other times and on other occasions than in using the said towing path in the said plea mentioned: As to second plea, *de injuria sua, &c.*; and traverse of what is within inverted commas in that plea: And as to the third plea of the said defendants lastly above pleaded in bar, as to the breaking, &c. above done the said plaintiff says (*precludi non*); because protesting that the same plea of the said defendants lastly above pleaded, and the matters therein contained, are not sufficient in law to bar or preclude the said plaintiff from having his aforesaid action thereof against the said defendants, and that the said plaintiff hath no need, nor is he bound by the law of the land to answer thereto; yet for replication in this behalf the said plaintiff says, that true it is that the said close in which, &c. is, and at the said several times when, &c. and long before, was contiguous on the east side thereof to the said close in the said last-mentioned plea called E. and only divided therefrom by a certain ditch filled with water, and the same dam erected in, over, and across the same in the said last-mentioned plea mentioned, and that the said close called Lower S. in which, &c. from time whereof, &c. until the separation thereof in the said plea mentioned, was contiguous towards the north on the said close in that plea mentioned called Upper S. and that the same two closes at the time of the said separation in the said last-mentioned plea mentioned, and long before were, and from thence hitherto have been, and still are contiguous and adjoining to the river of T. and that the same river is, and during all the time in that plea mentioned has been a common navigable river for all (or lord the king's subjects to pass and repass in and along the same with boats, &c. at all times at their will and pleasure, as in the said plea is alleged; and that by reason thereof every subject of this realm passing along the said river T. with their boats, &c. at the said several times when, &c. had, and of right ought to have, and yet hath and ought to have the liberty and privilege of going and passing on foot, and with horses, &c. in and along and through the said close in which, &c. on that side thereof adjoining to the said river of T. for the purpose of towing the said boats, &c. along the said river T. the same during all that time having been an usual and accustomed towing path for that

that purpose, as in that last plea is alledged; and that the said river of T. with great violence forced a channel or passage between the said place in the said plea mentioned called the Upper S. and the said close called the Lower S. in which, &c. and separated and divided the one from the other, and that the said dam in the said plea mentioned was erected and made across the same channel or passage between the said two closes in the said plea mentioned, and that the said dam was forced and washed away, and that the same two closes in the said plea mentioned have ever since the said dam was so forced and washed away continued separated and divided, and that a great current of water from the river hath ever since run and flowed through the same channel or passage between the same two closes, and that the said close in which, &c. is now bounded and surrounded on all sides by the said river of T. and the said newly-formed channel respectively, save and except on that side of the said close in which, &c. so contiguous to the said close of the said defendants as is above-mentioned; but for replication to the said last-mentioned plea of the said defendants, the said plain- *De injuria, &c.* tiff says, that the said defendants, at the said several times when, &c. of their own wrong, and without the residue of the cause in that plea mentioned, broke and entered, &c. in manner and form, &c.; and this the said plaintiff prays may be enquired of by the country, &c.

T. DAVENPORT.

And the said defendants, as to the said plea of the said plaintiff *Plea to new* above in reply pleaded as to that part of the trespasses newly as- *assignment.* signed as to the pulling up, throwing down, and destroying the said rails erected, set up, and being in the said close in which, &c. and taking and carrying away the same by them above supposed to be done on other occasions than in using the said towing path, say that they are not guilty thereof, as in and by the said plea is above newly assigned; and of this they put themselves upon the country, &c.: And as to the residue of the trespasses above newly assigned, they the said defendants say (*actio non*); because they say, that in, through, and over the said close of the said plaintiff in which, &c. there now is, and from time whereof, &c. there hath been a certain way for all persons whatsoever having occasion to tow any boats, &c. up and along the said river when and as often as they have towed their boats, &c. up and along the said river, the said towing path in the said plea mentioned from the south-east corner of the said close in which, &c. round and along the said close by the bank of the said river to the north-west corner of the same close, to go, return, and pass on foot and with horses, &c. from the said north-west corner of the same close through, over, and across the said close in which, &c. to the south-east corner thereof, for the purpose of towing up any other boats, &c. there as they have had or may have occasion; wherefore the said defendants, at the said several times when, &c. having taken up certain boats, &c. along the said towing path from the south-east corner to the north-west corner of the said close in which, &c. and having

NEW ASSIGNMENT—(REPLICATION TO PLEA TO)

having occasion to return to the south-east corner thereof for the purpose of bringing up other boats, &c. went, passed, and repassed on the said way there on foot, and with their horses, &c. by them made use of in towing their said boats, &c. along the other close in which, &c. from the north-west corner thereof unto the south-east corner thereof, which is the same residue of the trespasses above newly assigned, whereof, &c.; and this, &c.; wherefore, &c. [Issue on traverse.]

W. H. ASHHURST.

Replication to
plea to new as-
signment, pro-
testing that no
such way.

And as to the said plea of the said defendants above pleaded in bar, as to the residue of the said trespasses above newly assigned, the said plaintiff says (*precludi non*); because protesting that in, through, and over the said close of the said plaintiff in which, &c. there is not, nor from time whereof, &c. hath been a certain way for all persons whatsoever having occasion to tow any boats, &c. up and along the said river when and as often as they have towed their boats, &c. along the said towing path in the same plea mentioned, from the said south-east corner of the said close in which, &c. round and along the said close upon the bank of the said river to the north-west corner of the same close, to go, return, &c. as in the said plea is above alledged; but the said plaintiff saith, that the said residue of the said trespasses above newly assigned, and of which the said plaintiff above complains against them, were done and committed by the said defendants in the said close in the said declaration mentioned, in which, &c. at other times and on other occasions than in using the said pretended way in the said plea of the said defendants in this behalf above mentioned, and were done out of any such pretended way there as well as out of the towing path above mentioned; and this, &c.; wherefore, &c.

T. DAVENPORT.

Plea (to decla-
ration for tak-
ing, cutting, car-
rying away trees,
&c.) 1st, not
guilty; 2d, libe-
rum tenementum
of copyhold de-
franchising title.

And the said defendants, by William Balcombe their attorney, come and defend the force and injury when, &c. and say, that they are not guilty of the trespasses aforesaid above laid to their charge, in manner and form as the said V. hath above thereof complained against them; and of this they put themselves upon the country, &c.: And for further plea in this behalf as to the several supposed trespasses in the said close called the Bay, in the said first and second Counts of the said declaration mentioned; and also as to the seizing, taking, and carrying away the said trees, wood, and underwood in the said last Count of the said declaration mentioned, and converting and disposing thereof to their own use above supposed to have been committed, they the said defendants, by leave of the court here to them for this purpose granted, according to the form of the statute in such case lately made and provided, say, that the said V. ought not to have or maintain his aforesaid action thereof against them; because they say, that the said close called the Bay, in the said first Count mentioned, and the said close called the Bay, in the

the said second Count of the said declaration mentioned, are one and the same close, and not other and different, and the said supposed trespass in the said last Count of the said declaration mentioned was committed in the said close in which, &c. called the Bay: And the said defendants further say, that the said close called the Bay, in which, &c. is, and at the said time when, &c. *was as well called and known by the name of the Bay as by the name of the Boring Wheel Pound Bay*, and that the said close called the Bay, in which, &c. is, and at the same time when, &c. was, and from time whereof, &c. hath been lying within and parcel of the manor of _____, in the said county of Sussex, and a *customary tenement* of the same manor demised and demiseable by the copy of the court rolls of the said manor, by the lord of the said manor for the time being by his steward or deputy steward of the court of the said manor to any person or persons willing to take the same in fee simple or otherwise at the will of the lord of the said manor, according to the custom of the said manor: And the said defendants further say, that long before any of the said times when, &c. the most noble J. F. duke of Dorset was lord of the said manor, and being so lord thereof, he the said duke, long before any of the said times when, &c. to wit, at a court baron of the said duke holden in and for the said manor, at the parish of M. aforesaid, on the third day of February 1746, by Nathaniel M. gentleman, then steward of the lord of the said manor, by the copy of the court rolls of the said manor, *granted the said close called the Bay*, in which, &c. amongst others, to *Thomas Britridge*, to have and to hold the same unto the said T. Britridge, his heirs and assigns for ever, by copy of the court rolls of the said manor at the will of the lord of the said manor, according to the custom of the said manor; by virtue of which said grant the said T. Britridge after and before any of the said times when, &c. to wit, on the same day and year last aforesaid, entered into the said premises, with the appurtenances, and became seised thereof *in his demesne* as of fee at the will of the lord, according to the custom of the said manor; and being so seised thereof, the said T. B. afterwards, and before any of the said times when, &c. to wit, at a court baron of the said duke holden in and for the said manor, to wit, at the parish aforesaid, on the tenth day of October 1761, in his proper person, *did surrender* into the hands of the said lord of the said manor the said close called the Bay, in which, &c. (among other things) *to and for such uses as he the said T. B. should declare in and by his last will and testament*; and the said T. B. afterwards, and before any of the said times when, &c. to wit, on the twenty-sixth day of November 1761, at the parish of M. aforesaid, duly made and published his last will and testament in writing, and thereby gave and devised the said close called the Bay, in which, &c. (among other things) to one John Alehorn, to have and to hold the same unto the said J. A. and his assigns for and during the term of his natural life, with remainder to the issue of his body, and in default thereof to Mary Chapman and her assigns for and during the term of her natural life; and af-

terwards, to wit, on the same day and year last aforesaid, at M. aforesaid, died so seised of such his estate in the said close in which, &c. called the Bay; and that afterwards and before any of the said times when, &c. to wit, at a court baron of the said duke holden in and for the said manor, to wit, at the parish of M. aforesaid, on the sixth day of November 1764, before the said N. M. then being his steward of the court of the said manor, the said J. A. prayed to be admitted tenant of the said close called the Bay, in which, &c. with the appurtenances (amongst other things), and thereupon the said duke, by his steward aforesaid, did grant seisin thereof by the rod of the said J. A. to have and to hold the same unto the said J. A. and his assigns for and during the term of his natural life, with remainder to the issue of his body, and in default thereof to the said M. C. and her assigns for her life, by copy of the court rolls at the will of the lord according to the custom of the manor, and the said J. A. was then and there admitted tenant thereto; by virtue whereof the said J. A. afterwards, and before any of the said times when, &c. entered into the said close called the Bay, in which, &c. (among other things), and became and was seised thereof for and during the term of his natural life, at the will of the said lord of the said manor, according to the custom of the said manor; and the said M. C. afterwards, to wit, on the first day of October 1776, at the parish aforesaid, intermarried with the said T. C. and the said J. A. being so seised of the said close in which, &c. called the Bay, he the said J. A. afterwards, to wit, on the tenth day of November 1776, died without any lawful issue of his body, she the said M. C. then and there being alive, to wit, at the parish aforesaid; and thereupon afterwards, and before any of the said times when, &c. the most noble John Frederick, duke of Dorset, being lord of the said manor, to wit, at a court baron of the said duke holden in and for the said manor, to wit, at the parish aforesaid, on the twentieth of November, in the year last aforesaid, before George Barker, gentleman, deputy steward of Thomas Wally Partington, esquire, chief steward of the said lord of the said manor, came the said M. C. and prayed to be admitted tenant of the said close called the Bay, &c. in which, &c.; and thereupon the said duke, by his deputy steward aforesaid, by the copy of said court rolls, granted seisin thereof to the said M. C. by the rod, to have and to hold the same unto the said M. C. and her assigns for and during the term of her natural life, by the copy of the court rolls of the said manor at the will of the lord of the said manor, according to the custom of the said manor; by virtue of which said grant the said T. C. in right of the said Mary his wife afterwards, and before any of the said times when, &c. to wit, on the same day and year last aforesaid, entered into the said close called the Bay in which, &c. and became and was, and from thence hitherto has been, and still is seised thereof in his demesne as of freehold for and during the term of the natural life of the said M. his wife at the will of the lord, according to the custom of the said manor,

manor; and which said M. C. is still alive, to wit, at the parish of M. aforesaid; and being so seized thereof, he the said T. C. in his own right, and in the right of his said wife, and the said defendants as his servants, and by his command at the said several times when, &c. entered the said close called the Bay, as being the close of the said J. C. and with their feet in walking trod down, trampled upon, spoiled, and consumed the grafs and corn there then growing and being, as being the grafs and corn of the said T. C. there growing and being in the said close and soil of the said T. C. and with the cattle in the said first Count in the said declaration mentioned trod down, trampled upon, spoiled, eat up, depastured, and consumed the said other grafs and corn in the said first Count of the said declaration mentioned there then also growing and being, as being the grafs and corn of the said T. C. there also growing and being in the said close and soil of the said John Camfield, and with the said waggons, carts, and other carriages in the said first Count of the said declaration mentioned, crushed, squeezed, damaged, and spoiled the said other grafs and corn there also growing and being in the said close and soil of the said T. C. and with the wheels of the said carriages tore up, turned up, subverted, and spoiled the said soil in the said first Count of the said indenture mentioned, being the soil of the said J. C. and with divers instruments broke down, tore down, cut down, cut up, prostrated, and destroyed the said hedges and fences in the said first Count of the said declaration mentioned, there then erected, standing, and being in and upon the said close of the said T. C. and fenced and inclosed the same, as being the close of the said T. C. and dug up and subverted the said soil, being the soil of the said T. C. and filled up, levelled, and destroyed the said dikes, ditches, and drains in the said first Count of the said declaration mentioned, as being the dikes, ditches, and drains of and belonging to the said close of the said T. C. and sawed down, cut down, prostrated, and destroyed the said trees in the said first Count of the said declaration mentioned, there then standing, growing, and being, as being the trees of the said T. C. standing, growing, and being in and upon the close and soil of the said T. C. and the wood and materials coming and arising from the said hedges seized, took, and carried away, and converted and disposed thereof to their own use, as being the wood and materials coming and arising from the said hedges of the said T. C. erected, standing, growing, and being in and upon the said close of the said T. C. and with their feet in walking trod down, trampled upon, spoiled, and consumed the said other grafs and corn in the said second Count mentioned, there lately growing and being, as being the grafs and corn of the said T. C. growing and being in and upon the said close and soil of the said T. C. and with the said other cattle in the said second Count mentioned trod down, trampled upon, spoiled, eat up, depastured, and consumed the said other grafs and corn there also growing and being, as being the grafs and corn of the said T. C. there then growing, and being in and upon the said close of the said T. C. and with divers other waggons, carts, and other carriages,

carriages, crushed, squeezed, damaged, and spoiled the said other grafs and corn there then growing and being, as being the grafs and corn of the said T. C. there also growing and being in and upon the said close of the said T. C. and with the wheels of the said carriages tore up, turned up, subverted, and spoiled the said last-mentioned soil, as being the soil of the said T. C. and with divers instruments broke down, tore down, cut up, prostrated, and destroyed the said hedges and fences in the second Count of the said declaration mentioned, there then erected, standing, and being, as being the hedges and fences of the said T. C. erected, standing, and being in and upon the said close, and fenced and inclosed the same, as being the close of the said T. C. and with divers other instruments dug up and subverted the soil of the said last-mentioned close, being the soil of the said last-mentioned close, of the said T. C. and filled up, levelled, and destroyed the said other dikes, ditches, and drains in the said second Count of the said declaration mentioned, so being the said dikes, ditches, and drains of and belonging to the said close of the said T. C. and also seized, took, and carried away the said trees, wood, and underwood in the said last Count of the said declaration mentioned, and converting and disposing thereof to their own use, being the trees, wood, and underwood of the said T. C. growing and being in and upon the said close of the said T. C. called the Bay, in which, &c. as it was lawful for them to do, which are the said several supposed trespasses in the said close called the Bay, in which, &c. in the said first and second Counts of the said declaration mentioned, and seizing, taking, and carrying away the said trees, wood, and underwood in the said last Count of the said declaration mentioned, and converting and disposing thereof to their own use, whereof the said Vine hath above complained against them; and this they are ready to verify; wherefore they pray judgment if the said V. ought to have or maintain his aforesaid action thereof against them, &c. : And for further plea in this behalf as to the several supposed trespasses in the said close called the Nine Acres in the said first and second Counts of the said declaration mentioned, they the said defendants, by like leave of the court here to them for this purpose granted, according to the form of the statute in such case lately made and provided, say, that the said V. ought not to have or maintain his aforesaid action thereof against them; because they say, that the said close called the Nine Acres, in the said first Count mentioned, and the said close called the Nine Acres, in the said second Count of the said declaration mentioned, are one and the same close and not other or different: And the said defendants further say, that as well the said close called the Nine Acres, in which, &c. as also a certain other close otherwise the Boring Wheel Pound Bay are, and at the said time when, &c. were, and from time whereof, &c. hath been situate, lying, and being within the manor of D. in the said county of Suffex, and parcel of the said manor, and that the said close called the Bay is, and at the said times when, &c. was, and from time whereof, &c. hath been a customary tenement of the said manor demised and demised-

able by the copy of the court rolls of the said manor, by the lord of the said manor for the time being by his steward or deputy steward of the court of the said manor for the time being to any person or persons willing to take the same in fee simple, for life, or otherwise at the will of the lord, according to the custom of the said manor; of which said manor, with the appurtenances, whereof, &c. long before any of the said times when, &c. the most noble John Frederick, duke of Dorset, was seised in his demesne as of fee, and being so seised thereof, he the said duke, long before any of the said times when, &c. to wit, at the court baron of the said duke holden in and for the said manor, to wit, at the parish of M. aforesaid, on the twentieth day of November 1776, by G. B. deputy steward of Thomas Wally Partington, esquire, then steward of the lord of the said manor, granted seisin by the rod of the said close called the Bay, and other things to M. C. then and now the wife of the said T. C. to have and to hold the same unto the said M. C. and her assigns for and during the term of her natural life, by the copy of the court rolls at the will of the lord according to the custom of the said manor; by virtue of which said grant he the said John Camfield and Mary, in right of the said Mary, afterwards and before any of the said times when, &c. to wit, on the same day and year last aforesaid, entered into the said close called the Bay, and became, and at the said time when, &c. were seised thereof for and during the natural life of the said M. at the will of the said lord, according to the custom of the said manor: And the said T. C. &c. further say, that within the said manor there now is, and at the said times when, &c. there was, and from time whereof, &c. there hath been a certain custom there used and approved of, that is to say, that every customary tenant of the said customary tenement called the Bay for the time being hath had, and hath been accustomed to have a certain way from the said close called the Bay, in, through, and over the said close called the Nine Acres, in which, &c. unto and into a certain public highway leading from Hooney Common in the said parish of M. to Duddleswell in the parish of Buxtod, in the said county of Suffex, and so back again in the same way to go, pass, and repass with horses, cattle, cart, and carriages, for the convenient use and occupation of the said close called the Bay, every year at all times of the year and as often as occasion required; and the said T. C. being so seised of the said close called the Bay as aforesaid, and at the said several times when, &c. having to use the said way, he the said T. C. in his own right, and the said defendants as his servants, and by his command entered the said close called the Nine Acres, in which, &c. to the said close called the Bay, using the said way there for the convenient occupation of the said close called the Bay as it was lawful for them to do, and in so doing necessarily and unavoidably with their feet in walking trod down, trampled upon, spoiled, and consumed a little of the grass and corn there then growing and being, and the said cattle unavoidably trod down, trampled upon, spoiled, and consumed a little

3d, right of way
by prescription.

of

of the said grafs and corn there then growing and being in the said way and on the sides thereof, and the wheels of the said waggons, carts, and other carriages necessarily and unavoidably a little crushed; squeezed, damaged, and spoiled the said grafs and corn there also growing and being, and tore up, turned up, subverted, and spoiled a little of the said soil; and because the said way in the said close in which, &c. was at the said times when, &c. stopped up by the said hedges and fences in the said declaration mentioned, made and erected in and across the said way there, he the said John Camfield in his own right, and the said defendants as the servants, and by his command in order to open and gain a necessary passage there for the said cattle, carts, waggons, and carriages, and to use the same way, did then and there necessarily break and throw down a little of the said hedges and fences so made and erected across the said way there, and removed the same at a little distance, and without doing of which he could not pass along and use the said way; and because the said dikes, ditches, and drains in the said declaration mentioned, at the times when, &c. were wrongfully made in and across the said way in the said close called the Nine Acres, in which, &c. and obstructed the said T. C. in the use of the said way there, he the said T. C. in his own right, and the said defendants as his servants, and by his command filled up and levelled the same as it was lawful for them to do for the cause aforesaid, doing as little damage as on that occasion they possibly could, which are the same several supposed trespasses in the said close called the Nine Acres, in which, &c. whereof the said Vine hath above complained against them; and thus they are ready to verify; wherefore they pray judgment if the said V. ought to have or maintain his aforesaid action thereof against them: And for further plea in this behalf as to the several supposed trespasses in the said close called the Nine Acres, in the said first and second Counts of the said declaration mentioned, they the said defendants, by like leave of the court here to them for this purpose granted, according to the form of the statute in such case made and provided, say, that the said V. ought not to have or maintain his aforesaid action thereof against them; because they say, that the said close called the Nine Acres, in the said first Count mentioned, and the said close called the Nine Acres, in the said second Count of the said declaration mentioned, are one and the same close and not other or different: And the said defendants further say, that as well the said close called the Nine Acres, in which, &c. as also a certain other close called the Boring Wheel Pound, otherwise the Four Acres, are, and at the said times when, &c. were, and from time whereof, &c. hath been situate, lying, and being within the manor of Duddleswell, in the said county of Suffex, and parcel of the said manor, and that the said close called the Boring Wheel Pound, otherwise the Four Acres, is, and at the said times when, &c. was, and from time whereof, &c. hath been a customary tenement of the said manor demised and demisable by the copy of the court rolls of the said manor, by the lord of the said

manor

manor for the time being by his steward or deputy steward of the said court of the said manor for the time being to any person or persons willing to take the same in fee simple, for life, or otherwise, at the will of the lord, according to the custom of the said manor; of which said manor, with the appurtenances, whereof, &c. long before any of the said times when, &c. the most noble John Frederick, duke of D. was seised in his demesne as of fee, and being so seised thereof, he the said duke, long before any of the said times when, &c. to wit, at a court baron of the said duke holden in and for the said manor, to wit, at the parish of M. aforesaid, on the twentieth day of November 1776, by G. B. deputy steward of J. W. P. then steward of the lord of the said manor, granted seisin by the rod of the said close called the Boring Wheel Pound, otherwise the Four Acres, among other things, to M. C. then and now the wife of the said T. C. to have and to hold the same unto the said M. C. and her assigns during the term of her natural life, by the copy of the court rolls at the will of the lord, according to the custom of the said manor; by virtue of which said grant he the said J. C. and Mary, in right of the said Mary, afterwards and before any of the said times when, &c. to wit, on the same day and year last aforesaid, entered into the said close called Boring Wheel Pound, otherwise the Four Acres, and became, and at the said time when, &c. were seised thereof for and during the term of the natural life of the said M. at the will of the lord, according to the custom of the said manor: And the said M. C. &c. further say, that within the said manor there now is, and at the said times when, &c. there was, and from time whereof &c. there hath been a certain custom there used and approved of, that is to say, that every customary tenant of the said customary tenement called the Boring Wheel Pound, otherwise the Four Acres, for the time being, hath had and hath used, and been accustomed to have a certain way from the said close called the Boring Wheel Pound, otherwise the Four Acres, into, through, and over the said close called the Nine Acres, in which, &c. *unto and into a certain public highway leading from Horney Common into the said parish of M. to Duddleswell, in the parish of Buxstead, in the said county of S. and so back again to go, pass, and repass with horses, cattle, carts, and carriages, for the convenient use and occupation of the said close called the Boring Wheel Pound, otherwise the Four Acres, every year and at all times in the year as often as occasion required; and the said T. C. being seised of the said close called Boring Wheel Pound, otherwise the Four Acres as aforesaid, and at the said several times when, &c. having occasion to use the said way, he the said T. C. in his own right, and the said defendants as his servants, and by his command, entered the said close called the Nine Acres, in which, &c. and went and passed with the said horses, carts, waggons, and other carriages in the said first and second Counts of the said declaration mentioned from the said public highway leading from Horney Common, in the said parish of M. to Duddleswell, in the said parish*

TRESPASS.—REPLICATION—

of B. aforesaid, in the said county of S. in, through, and over the said close called the Nine Acres, in which, &c. to the said close called the Boring Wheel Pound, otherwise the Four Acres, using the same way there for the convenient occupation of the said close called the Boring Wheel Pound, otherwise the Four Acres, as it was lawful for them to do, and in so doing necessarily and unavoidably with their feet in walking trod down, trampled upon, consumed, and spoiled a little of the grass and corn there then growing and being, and the said cattle unavoidably trod down, trampled upon, spoiled, and consumed a little of the said grass and corn there then growing and being in the said way, and on the sides thereof, and the wheels of the said waggons, carts, and other carriages necessarily and unavoidably a little crushed, squeezed, damaged, and spoiled the said grass and corn there also growing and being, and tore up, turned up, and subverted a little of the said soil; and because the said way in the said close in which, &c. and at the said times when, &c. was stopped up by the said hedges and fences in the said declaration mentioned and made and erected in and across the said way there, he the said T. C. in his own right, and the said defendants as his servants, and by his command in order to open and gain a necessary passage there for the said cattle, carts, waggons, and other carriages, and to use the same way, did then and there necessarily break and throw down a little of the said hedges and fences so made and erected across the said way there, and removed the same at a little distance, and without doing of which he could not pass along and use the said way; and because the said dikes, ditches, and drains in the said declaration mentioned, at the said times when, &c. were wrongfully made in and across the said way in the said close called the Nine Acres, in which, &c. and obstructed the said T. C. in the use of the said way, and he the said T. C. in his own right, and the said defendants as his servants, and by his command, filled up and levelled the same: as it was lawful for them to do for the cause aforesaid, doing as little damage as on that occasion they possibly could, which are the same several supposed trespasses in the said close called the Nine Acres, in which, &c. whereof the said V. hath above complained against them; and this they are ready to verify; wherefore they pray judgment if the said V. ought to have or maintain his aforesaid action thereof against them.

W. BALDWIN.

Replication, protesting that locus is not parcel, &c. or copyhold, but freehold of, &c. traversing estate for life in the wife, and custom.

And the said V. as to the said plea of the said defendants by them first above pleaded in bar, as to the said declaration of the said V. whereof they have above put themselves upon the country, the said V. doth so likewise: And the said V. as to the said plea of the said defendants by them secondly above pleaded in bar, as to the several supposed trespasses in the said close called the Bay, in the said first and second Counts of the said declaration mentioned; and also as to the seizing, taking, and carrying away the said trees, wood, and underwood in the said last Count of the said declaration mentioned, and converting and disposing thereof to their own use in the said plea acknowledged to have been committed

RIGHT OF WAY (PRIVATE.)

mitted by the said defendants, he the said V. says, that by reason of any thing by them in that plea secondly above pleaded in bar alledged, he the said V. ought not to be barred from having and maintaining his aforesaid action against them; because protesting that the said close called the Bay, in which, &c. is not, nor at the said several times when, &c. was, and from time whereof, &c. hath been lying within a parcel of the manor of D. in the said county of S. and a customary tenement of the said manor demised and demiseable by the copy of the court rolls of the said manor, by the lord of the said manor for the time being, by his steward or deputy steward of the court of the said manor, to any person or persons willing to take the same in fee simple or otherwise, at the will of the lord of the said manor, according to the custom of the said manor, in manner and form as the said defendants have above in their said plea by them secondly above pleaded in bar alledged; for replication in this behalf the said V. says, that the said close called the Bay, in which, &c. at the said several times when, &c. was and still is the close, soil, and freehold of the said V.; without this, that the said T. C. at the said several times when, &c. or any of them was, and from thence hitherto hath been, and still is held thereof as of freehold, for and during the term of the natural life of the said Mary his wife, in manner and form as the said defendants have above in their said plea by them secondly above pleaded in bar alledged; and this the said V. is ready to verify; wherefore since that the said defendants have above acknowledged the committing of the said several trespasses in the said close called the Bay, in the said first and second Counts of the said declaration mentioned, and the seizing, taking, and carrying away the said trees, wood, and underwood in the said last Count of the said declaration mentioned, and converting and disposing thereof to their own use in manner and form as the said V. hath in his said declaration alledged, he the said V. prays judgment and his damages, by reason of the committing of the said several trespasses, to be adjudged to him, &c.: And the said V. as to the said plea of the said defendants by them thirdly above pleaded, as to the several trespasses in the said close called the Nine Acres, in the said first and second Counts of the said declaration mentioned, by them above acknowledged to have been committed, says, that the said V. by reason of any thing by them in that plea above alledged, ought not to be barred from having and maintaining his aforesaid action thereof against them; because protesting that as well the said close called the Nine Acres, in which, &c. as also a certain other close called the Bay, otherwise the Boring Wheel Pound Bay, are not, and at the said several times when, &c. were not, nor from time whereof, &c. have been situate, lying, and being within the manor of D. in the said county of S. and parcel of the said manor; protesting also, that the said close called the Bay is not, nor at the said times when, &c. was, nor from time whereof, &c. hath been a customary tenement of the said manor, demised and demiseable by the copy of the court rolls of the said manor, by the

TRESPASS.—REPLICATION—

the lord of the said manor for the time being to any person or persons willing to take the same in fee simple for her life or otherwise, at the will of the lord, according to the custom of the said manor; protesting also, that the said T. C. and Mary, in right of the said Mary, before and at the said several times when, &c. were not, nor are seized of and in the said close called the Bay, for and during the natural life of the said M. in manner and form as the said defendants have above in their said plea by them thirdly above pleaded alledged; for replication in this behalf the said Vine says, that the said defendants, of their own wrong, committed the said several trespasses in the said close called the Nine Acres, in which, &c. in the said first and second Counts of the said declaration mentioned, in manner and form as the said V. hath above thereof complained against them; without this, that within the said manor in that said plea mentioned there now is, and at the said times when, &c. there was, and from time whereof, &c. there hath been a certain custom there used and approved of, that is to say, that every customary tenant of the supposed customary tenement called the Bay in that said plea mentioned for the time being hath had, and hath used and been accustomed to have a certain way from the said close called the Bay into, through, and over the said close called the Nine Acres, in which, &c. unto and into a certain public highway leading from Horney Common into the said parish of M. to D. in the parish of Buxitead, in the said county of S. and so back again in the same way, to go, pass, and repass with horses, cattle, carts, and carriages for the convenient use and occupation of the said close called the Bay every year at all times in the year, and as often as occasion required, in manner and form as the said defendants have above in their said plea by them thirdly above pleaded alledged; and this the said V. is ready to verify; wherefore inasmuch as the said defendant has above acknowledged the committing of the said trespass above-mentioned, he the said Vine prays judgment and his damages, by reason of the committing of the said last-mentioned trespasses, to be adjudged to him, &c.: And the said V. as to the said plea of the said defendants by them lastly above pleaded as to the said several trespasses in the said close called the Nine Acres, in the first and second Counts of the said declaration mentioned by them the said defendants above acknowledged to have been committed, says, that he the said V. by reason of any thing by them in that said last-mentioned plea above alledged, ought not to be barred from having and maintaining his aforesaid action thereof against them; because protesting that as well the said close called the Nine Acres, in which, &c. as also a certain other close called the Boring Wheel Pound, otherwise the Four Acres, are not, nor at the said time when, &c. were, nor from time whereof, &c. have been situate, lying, and being within the manor of D. in the said county of S. and parcel of the said manor; protesting also, that the said close called the Boring Wheel Pound, otherwise the Four Acres, is not, nor at the said several times when, &c. was, nor from time whereof, &c. hath been a customary tenement of the said manor demised and demiseable by

by the copy of the court rolls of the said manor by the lord of the said manor for the time being, by his steward or deputy steward of the said court of the said manor for the time being to any person or persons willing to take the same in fee simple, for life, or otherwise at the will of the lord, according to the custom of the said manor; protesting also that the said T. C. and M. his wife, in right of the said Mary, before and at the said several times when, &c. were not nor are seized of and in the said close called the Bay for and during the natural life of the said Mary, in manner and form as the said defendants have above in their said plea by them lastly above pleaded alledged; for replication in this behalf the said V. says, that the said defendants of their own wrong committed the same several trespasses in the said close called the Nine Acres, in which, &c. in the said first and second Counts of the said declaration mentioned, in manner and form as the said V. hath above thereof complained against them; without this, that within the said manor in that said last-mentioned plea mentioned there now is, and at the said times when, &c. there was, and from time whereof, &c. there hath been a certain custom there used and approved of, that is to say, that every customary tenant of the said customary tenement called the Boring Wheel Pound, otherwise the Four Acres for the time being hath had, and hath used and been accustomed to have a certain passage from the said close called the Boring Wheel Pound, otherwise Four Acres, into, through, and over the said close called the Nine Acres, in which, &c. unto and into a certain public highway leading from Horney Common into the said parish of M. to D. in the parish of B. in the said county of S. and so back again, to go, pass, and repass with horses, cattle, carts, and carriages for the convenient use and occupation of the said close called the Boring Wheel Pound, otherwise the Four Acres, every year at all times in the year, and as often as occasion required, in manner and form as the said defendants have in their said plea by them lastly above pleaded alledged; and this the said V. is ready to verify; wherefore inasmuch as the said defendants have above acknowledged the committing of the said last-mentioned trespass, and the said V. prays judgment and his damages, by reason of the committing of the said last-mentioned trespass, to be adjudged to him, &c.

C. RUNNINGTON.

And the said defendants, as to the said plea of the said V. by him above in reply pleaded to the said plea of the said defendants by them secondly above pleaded in bar as to the several supposed trespasses in the said close called the Bay in the said first and second Counts of the said declaration mentioned, and also as to the seizing, taking, and carrying away the said trees, wood, and underwood in the said last Count of the said declaration mentioned, and converting and disposing thereof to their own use, by the said defendant above supposed to have been committed (as before) says, that the said T. C. at the said several times when, &c. was, and from thence hitherto

Rejoinder, issue
on all the repli-
cations.

hath been, and still is seized of the said close called the Bay for and during the term of the natural life of the said Mary his wife, in manner and form as the said defendants have above in their said plea by them lastly above pleaded in bar alledged; and of this they put themselves upon the country, &c.; and the said V. doth the like: And as to the said plea of the said V. by him above in reply pleaded to the said plea of the said defendants by them thirdly above pleaded in bar as to the said several supposed trespasses in the said close called the Nine Acres, in the said first and second Counts of the said declaration mentioned by the said defendants above supposed to have been committed, the said defendant (as before) says, that within the said manor there now is, and at the said times when, &c. there was, and from time whereof, &c. there hath been a certain custom there used and approved of, that is to say, that every customary tenant of the said customary tenement called the Bay in that plea mentioned for the time being hath had, and hath used and been accustomed to have a certain way from the said close called the Bay, into, through, and over the said close called the Nine Acres, in which, &c. unto and into a certain public highway leading from Horney Common into the parish of M. to D. in the parish of B. in the said county of S. and so back again into the same way, to go, pass, and repass with horses, cattle, carts, and other carriages for the convenient use and occupation of the said close called the Bay every year at all times in the year as often as occasion required, in manner and form as the said defendants have above in their said plea by them thirdly above pleaded alledged; and of this they put themselves upon the country; and the said Vine doth the like: And as to the said plea of the said Vine by him above in reply pleaded to the said plea of the said defendants by them lastly above pleaded in bar as to the several trespasses in the said close called the Nine Acres, in the said first and second Counts of the said declaration mentioned by the said defendants above supposed to have been committed, the said defendants (as before) say, that within the said manor there now is, and at the said times when, &c. there was, and from time whereof, &c. there hath been a certain custom there used and approved of, that is to say, that every customary tenant of the said customary tenement called the Boring Wheel Pound, otherwise the Four Acres, into, through, and over the said close called the Nine Acres, in which, &c. unto and into a certain public highway leading from Horney Common in the said parish of M. to D. in the parish of B. in the said county of S. and so back again, to go, pass, and repass with horses, cattle, carts, and other carriages for the convenient use and occupation of the said close called the Boring Wheel Pound, otherwise the Four Acres, every year at all times in the year as often as occasion required, in manner and form as the said defendants have above in their said plea by them lastly above pleaded alledged; and of this they put themselves upon the country, &c.; and the said V. doth the like, &c.; therefore as well to try this issue as the said other issues above joined between the said parties,

let

PLEA.—RIGHT OF WAY (PRIVATE.)

Let a jury thereupon come before our lord the king at Westminster next after _____, by whom, &c. and who neither, &c. to recognize, &c. because as well, &c. the same day is given to the said parties there, &c.

At trial, Summer Assizes 1786, before Lord Loughborough, plaintiff had a verdict with small damages for *trespassing* *the trespass only*, which defendants had not, nor could justify.

SPRIGT } AND the said Thomas, by Richard Shawe his Plea 1st, not
against } attorney, comes and defends the force and injury guilty.
BAINBRIDGE. } when, &c. and says that he is not guilty of the several trespasses aforesaid above laid to his charge, or any or either of them, in manner and form as the said William hath above thereof complained against him; and of this he puts himself upon the country: And for further plea as to the breaking and entering the said close in the said first Count of the said declaration mentioned, and in which, &c. and with his feet in walking treading down, trampling upon, consuming, and spoiling the grats there then growing and being, above supposed to have been done by the said Thomas, he the said Thomas, by leave of the court here for this purpose first had and obtained, according to the form of the statute in such case made and provided, says, that the said William ought not to have or maintain his aforesaid action thereof against him; because he says, that he the said Thomas, before and at the said several times when, &c. in the said first Count mentioned was, and from thence hitherto hath been and still is seised in his own right as of free and in a certain ancient messuage or dwelling-house situate in the parish and county aforesaid near to the said close in the said first Count of the said declaration mentioned, and in which, &c. and during all that time was and still is the occupier of the said messuage or dwelling-house, and that he the said Thomas, and all those whose estate he now hath, and at the said several times when, &c. in the said first Count mentioned had of and in the said messuage or dwelling-house, with the appurtenances, for the time being, from time whereof the memory of man is not to the contrary, have had and have used, and been accustomed to have, and still of right ought to have and use for and by himself and themselves, his and their farmers and tenants, occupiers of the said messuage or dwelling-house, with the appurtenances, for the time being, the liberty and privilege of drawing and fetching water from a certain well or spring of water situate and being in the said close in the said first Count of the said declaration mentioned, and in which, &c. every year at all necessary and convenient times of the year at his and their free will and pleasure; and that for that purpose he the said Thomas, and all those whose estate he now hath, and at the said several times when, &c. had of and in the said messuage or dwelling-house, with the appurtenances, for the time being, from time whereof the memory of man is not to the contrary, have had and have used, and been accustomed

ad Plea, that the defendant is seised of a house near locus. Prescription to draw water out of a well, and a way to the well over locus; that in fetching the water he unavoidably, &c. &c.

TRESPASS.—PLEA.—RIGHT OF WAY—

to have, and of right ought to have had, and still of right ought to have for himself and themselves, his and their farmers and tenants, occupiers of the said messuage or dwelling-house, a certain way from the said messuage or dwelling-house, with the appurtenances, of him the said Thomas unto and into, through, over, and along the said close in the said first Count of the said declaration mentioned, and in which, &c. unto the said well or spring of water there, and from thence so back again in the said way there to the said messuage or dwelling-house of the said Thomas, to go, return, pass, and repass on foot, and at all necessary and convenient times of the year at his and their free will and pleasure, as belonging and appertaining to the said messuage or dwelling-house of him the said Thomas, for which reason he the said Thomas being seised of and in the said messuage or dwelling-house, with the appurtenances, and being also the occupier of the said messuage or dwelling-house, with the appurtenances, and so entitled to the liberty and privilege of drawing or fetching water from the said well or spring of water in the said close in the said first Count of the said declaration mentioned, and in which, &c. as aforesaid, and to such way, and from the said well or spring of water as aforesaid, at the said several times when, &c. the time being necessary and convenient times of the year for that purpose, and the said Thomas then and there wanting water from the aforesaid well or spring of water, entered into the said close in the said first Count of the said declaration mentioned, and in which, &c. and went, returned, passed, and repassed on foot in, through, over, and along the same in the said way there towards and to and from the said well or spring of water there, in order and for the purpose of drawing and fetching water from the said well or spring of water there, as he lawfully might for the cause aforesaid, and in so doing he the said Thomas with his feet in walking necessarily and unavoidably trod down, trampled upon, consumed, and spoiled a little of the grass there then growing in the said close in the said way there, doing as little damage to the said William as on that occasion he possibly could, which is the same trespass in the introductory part of this plea mentioned, whereof the said William hath above complained against him the said Thomas; and thus he the said Thomas is ready to verify; wherefore he prays judgment if the said William ought to have or maintain his aforesaid action against him: And for further plea as to the breaking and entering the said close in the said first Count of the said declaration mentioned, and in which, &c. and with his feet in walking treading down, trampling upon, consuming, and spoiling the grass of the said W. there then growing and being, above supposed to be done by the said Thomas, he the said Thomas, by like leave of the court here for this purpose first had and obtained, according to the form of the statute in such case made and provided, says, that he the said William ought not to have or maintain his aforesaid action thereof against him; because he says, that he the said Thomas, before and at the said several times when, &c. in the said first Count mentioned, was, and from thence hitherto hath been and still is seised in his demesne as of fee, &c. &c. [Go

3d Plea, Licence.

on same as before, only omitting what is in *Italic*] : And for further plea as to the breaking and entering the said close in the said first Count of the said declaration mentioned, and with his feet in walking treading down, trampling upon, consuming, and spoiling the grass there then growing and being, and in the said first Count in that respect mentioned, and with cattle eating up, depasturing, treading down, trampling upon, consuming, and spoiling the said other grass there, and in the said first Count in that respect mentioned above supposed to have been committed by the said Thomas, he the said Thomas, by like leave of the court here for this purpose first had and obtained, according to the form of the statute in such case made and provided, says, that the said William ought not to have or maintain his aforesaid action thereof against him; because he saith, that he the said Thomas, at the said several times when, &c. in the said first Count mentioned, by the leave and licence, permission, and consent of the said William to him for that purpose first given and granted, to wit, at the parish aforesaid, in the county aforesaid, broke and entered the said close in the said first Count of the said declaration mentioned (1), and with feet in walking trod down, trampled upon, consumed, and spoiled the said grass there then growing, and in the said first Count of the said declaration mentioned in that respect mentioned, *and with these cattle in the said first Count mentioned eat up, depastured, trod down, trampled upon, consumed, and spoiled the said other grass in the said first Count in that respect mentioned*, as he lawfully might for the cause aforesaid, which is the same trespass, &c. [Conclude as before] : And for further plea as to the breaking and entering the said close in the said second Count of the said declaration mentioned, and with feet in walking treading down, &c. the grass there then growing, and in the said second Count in that respect mentioned, and with the said cattle in the said second Count mentioned eating up, &c. the said other grass there then growing, and in the said second Count in that respect mentioned, breaking down, pulling down, prostrating, and destroying the said other gates, hedges, and fences in that Count mentioned, there then erected, standing, and being, and in the said second Count mentioned, and the materials thereof coming, taking, and carrying away, and converting and disposing thereof to his own use above supposed to have been done by the said Thomas, he the said Thomas, by like leave of the court here for this purpose first had and obtained, according to the form of the statute in such case made and provided, says, that the said William ought not to have or maintain his aforesaid action thereof against him; because he says, that the said close in the said second Count mentioned, and in which, &c. now is, and at the said several times when, &c. in the said second Count mentioned, was the close, soil, and freehold of him the said Thomas, for which reason he the said Thomas, at the said several times when, &c. in the said second Count of the said declaration mentioned, broke and entered the said close in that Count mentioned, and in which, &c. as being the soil, close, and freehold

4th Plea.

(1) " and in which, &c."

5th Plea, *liberum tenementum*.

of him the said Thomas, and with feet in walking, &c. the grass there then growing and being, and in the said second Count in that respect mentioned, and with cattle eat up, &c. the said other grass there then growing and being, and in the said second Count in that respect mentioned, as being the grass of the said Thomas respectively growing and being in the said close, soil, and freehold of him the said Thomas, and broke down, &c. the said gates in that Count mentioned, there then erected, &c. and in the said second Count mentioned, and the materials thereof coming took and carried away, and converted and disposed thereof to his own use, as being the gates, hedges, fences, and materials of the said Thomas as he lawfully might for the cause last aforesaid, which is the same supposed trespass in the introductory part, &c. [Conclude as before]: And for further plea as to the breaking and entering the said close in the said second Count of the said declaration mentioned, and with his feet in walking, &c. the grass there then growing and being, and in the said second Count in that respect mentioned, and with the said cattle in the said second Count mentioned eating up, &c. the said grass there then growing and being, and in the said second Count in that respect mentioned above supposed to have been done by the said Thomas, he the said Thomas, by like leave of the court here for this purpose first had and obtained, according to the form of the statute in such case made and provided, says, that the said William ought not to have or maintain his aforesaid action thereof against him the said Thomas; because he says, that he the said Thomas, before and at the said several times when, &c. in the said second Count in the said declaration mentioned, was, and from thence hitherto hath been and still is seized in his demesne as of fee of and in the said close in the said second Count mentioned, and in which, &c. and with the appurtenances, and being so seized thereof he the said Thomas, before any of the said times when, &c. in the said Count mentioned, to wit, on, &c. in, &c. at, &c. by a certain indenture then and there made between him the said Thomas of the one part, and the said William of the other part (one part of which said indenture, sealed with the seal of the said William, and bearing date the day and year last aforesaid, he the said Thomas now brings into court here), did demise, lease, set, and to suffer unto the said William, his executors, administrators, and assigns, a certain farm consisting of a messuage and of certain lands and of other premises in the said indenture mentioned, and whereof the said close in the said second Count of the said declaration mentioned, and in which, &c. was and is part (except and always reserving unto him the said Thomas, his heirs and assigns, amongst other premises, the said close in the said second Count of the said declaration mentioned, and in which, &c. from Lady Day till the ninth day of November in every year during the term thereafter mentioned), to have and to hold the said demised premises, with the appurtenances (except as before excepted), unto the said William, his executors, administrators, and assigns, for and during

6th Plea.

(GIVING COLOUR)—AND LICENCE.

and unto the full end and term of twelve years, to commence as follows, &c. &c. from thenceforth respectively ensuing and fully to be complete and ended, at and under the rents and covenants in the said indenture mentioned, as by the said indenture of lease (relation being thereunto had) may (amongst other things) more fully and at large appear; by virtue and under colour of which said demise he the said William, before any of the said times when, &c. in the said second Count of the said declaration mentioned, entered into the said premises so demised as aforesaid, whereof the said close in the said second Count of the said declaration mentioned, and in which, &c. was and is parcel as aforesaid, and became and was possessed thereof, and so remained and continued from thence until and at the said several times when, &c. in the said second Count of the said declaration mentioned, at which said several times when, &c. in the said Count mentioned, the same being between Lady day and the ninth day of November, in the said year of 1765, and the several subsequent years between that year and the expiring the bill of the said William, he the said Thomas, under and by virtue of the said exception and reservation out of the said demise as by him made to the said William as aforesaid, entered into the said close in the said second Count of the said declaration mentioned, and in which, &c. and with his feet in walking trod down, &c. the said grass in the said second Count of the said declaration mentioned, and in which, &c. and with the said cattle in the said second Count mentioned eat up, &c. the said other grass in that Count mentioned, as he lawfully might for the cause aforesaid, which is the same trespass, &c. &c. [Conclude as before]: And for further pleas to the breaking and entering, &c. &c. [7th Plea. Go on with this plea, fine as the fourth, omitting what is in Italic, and marking what is in the margin, and observing to make it the second Count instead of the first]: And for further plea as to the breaking and entering the said barn in the said third Count of the said declaration mentioned, and in which, &c. and seizing and taking the said goods and chattels in that Count also mentioned, and carrying the same away, and converting and disposing thereof to his own use, above supposed to have been committed by the said Thomas, he the said Thomas, by like leave of the court here for this purpose first had and obtained, according to the form of the statute in such cases made and provided, says that the said William ought not to have or maintain his aforesaid action thereof against him, because he says, that he the said Thomas, at the said several times when, &c. in the said third Count mentioned, by the leave, licence, permission, and consent of the said William to him for that purpose first given and granted, to wit, at, &c. in, &c. broke and entered the said barn in the said third Count of the said declaration mentioned, and in which, &c. and seized and took the said goods and chattels in the said third Count also mentioned, and carried the same away, and converted and disposed to his own use, as he lawfully might for the cause aforesaid, which is the same trespass in the, &c. &c. [8th Plea, leave and licence. 9th Plea. Conclude as before]: And for further plea

plea as to the breaking and entering the said barn in the said third Count of the said declaration mentioned, and seizing and taking the goods and chattels in that Count also mentioned, and carrying the same away, and converting and disposing thereof to his own use, above supposed to have been committed by the said Thomas, he the said Thomas, by like leave, &c. according to the form, &c. ought not to have, &c.; because he says, that he the said Thomas, after the committing of the said trespass by this plea above pleaded, and before the exhibiting the bill of the said William against the said Thomas, to wit, on, &c. at, &c. in, &c. gave and delivered unto the said William, in full satisfaction and amends for the said trespasses by this plea pleaded to, a certain large quantity of straw, to wit, a quantity of straw equal to the said quantity of straw of the said William so taken by him the said Thomas at the said times when, &c. in the said third Count mentioned from and out of the said barn of the said William as aforesaid, which said straw so given and delivered by the said Thomas to the said William as aforesaid he the said William then and there took, accepted, and received of and from the said Thomas as for and in full satisfaction and amends for the said trespass by this plea above pleaded to; and this he the said Thomas is ready to verify, &c. &c. [Conclude as before]: And for further plea as to the seizing and taking the said can in the said fourth Count of the said declaration mentioned, and also to the seizing and taking the said can in the said fifth Count of the said declaration mentioned, and carrying the same away, and converting and disposing thereof to his own use, above supposed to be done by the said Thomas, he the said Thomas, by like leave, &c. according to the form, &c. saith, that the said William ought not to have, &c.; because he saith, *that the said pump in the said fourth Count of the said declaration mentioned, and the said pump in the said fifth Count of the said declaration mentioned were and are one and the same pump, and not divers, other, or different pumps, and that the said can in the said fourth Count of the said declaration mentioned, and the said can in the said fifth Count of the said declaration mentioned were and are one and the same can, and not divers, other, or different, and that the said seizing and taking of the said can in the said fourth Count of the said declaration mentioned, and the said seizing and taking of the same in the said fifth Count of the said declaration mentioned are one and the same seizing and taking of the said can, and not divers, other, or different, and that he the said Thomas, before and at the said several times when, &c. in the said fourth and fifth Counts mentioned*

(2) "by the leave and licence of the said William to him for that purpose first given and granted, to wit, at, &c. in, &c. seized and took the said can in the said fourth and fifth Counts mentioned, and carried away the same, and converted and disposed thereof to his own use, as he lawfully might for the cause aforesaid, which is the said trespass, &c. &c.

(2), *was, and from thence hitherto hath been, and still is seized in his demesne as of fee of and in a certain ancient messuage or dwelling-house, situate in the parish and county aforesaid, and during all that time was and still is the occupier of the said messuage or dwelling house, and that he the said Thomas, and all those whose estate he now hath, and at the several times when, &c. in the said fourth and fifth Counts mentioned had of and in the said messuage or dwelling house, and at the several times when, &c. in the said fourth and fifth Counts mentioned, and carried away the same, and converted and disposed thereof to his own use, as he lawfully might for the cause aforesaid, which is the said trespass, &c. &c.*

PLEA—EASEMENT—AND LICENCE.

suage or dwelling-house, with the appurtenances, for the time being, from time whereof the memory of man is not to the contrary, have, as an appurtenant, and by way of easement to the said messuage or dwelling-house, had and have used, and been accustomed to have, and still of right ought to have and use, for and by himself and themselves, his and their farmers and tenants, occupiers of the said last-mentioned messuage or dwelling-house for the time being the liberty and privilege of drawing, pumping, taking, and fetching water from the said pump in the said fourth and fifth Counts of the said declaration and hereinbefore mentioned to be used in his said messuage or dwelling-house as occasion hath required or may require, and for that purpose and on that occasion have during all the time aforesaid used and been accustomed to use, and of right ought to have used, and still of right ought to use the can of and belonging to the said pump for the time-being, and for which reason the said Thomas, being such occupier of the said messuage or dwelling-house of him the said Thomas as aforesaid, and having occasion for water from the said pump at the said several times when, &c. in the said fourth and fifth Counts of the said declaration mentioned, did draw, pump, take, and fetch away from the said pump in those Counts and hereinbefore mentioned to be used in his aforesaid messuage or dwelling-house, and on that occasion and for that purpose he the said William, and at the said several times when, &c. in the said fourth and fifth Counts, did take, use, and carry away the said can in these Counts and hereinbefore mentioned, the said can then and there being the can belonging to the aforesaid pump, and to be used with the same in manner and for the purpose aforesaid, as he the said Thomas lawfully might do for the cause aforesaid, which is the same trespass, &c. &c.: And for further plea, &c. &c. [This plea
 11th Plea.

*same as the last, only omitting what is in Italic, and inserting what is in the margin]: And for further plea as to the seizing and taking the said goods and chattels in the said last Count of the said declaration mentioned, and carrying the same away, and converting and disposing thereof to his own use, above supposed to have been committed by the said Thomas, he the said Thomas, by like leave of the court here for this purpose first had and obtained, according to the form of the statute in such case made and provided, says, that the said William ought not to have, &c. ; because he says, that he the said Thomas, at the said several times when, &c. in the said last Count mentioned, at, &c. in, &c. by the leave and licence of the said William to him for that purpose there first given and granted, seized and took the said goods and chattels in the said last Count of the said declaration mentioned, and carried the same away, and converted and disposed thereof to his own use, as he lawfully might for the cause aforesaid, which is the same trespass, &c. &c.: And for further plea as to the
 12th Plea.*

seizing and taking the said goods and chattels in the said last Count of the said declaration mentioned, and carrying the same away, and converting and disposing thereof to his own use, above supposed to have been committed by the said Thomas, he the said Thomas,
13th Plea.

TRESPASS.—PLEA—ACCORD AND SATISFACTION.

Thomas, by like leave of the court here for this purpose first had and obtained, according to the form of the statute in such case made and provided, says, that the said William ought not to have or maintain his aforesaid action thereof against him, because he says, that he the said Thomas, after the committing of the said trespass by this plea above pleaded to, and before the exhibiting the bill of the said William against the said Thomas, to wit, on, &c. at, &c. in, &c. gave and delivered unto the said William, in full satisfaction and amends for the said trespass by this plea pleaded to, certain large quantities of the like goods and chattels as are in the said last Count mentioned, to wit, the same quantity of such goods and chattels as was so taken by him the said Thomas, as at the said several times when, &c. in the said last Count mentioned as aforesaid, which said goods and chattels so given and delivered by the said Thomas to the said William as last aforesaid he the said William then and there took, accepted, and received of and from the said Thomas as for and in full satisfaction and amends for the said trespass by this plea above pleaded to; and this he the said Thomas is ready to verify; wherefore he prays,
 &c. &c.

V. LAWES.

DISTRESSES.

Trinity Term, 22. Geo. III.

Declaration.

CUNNINGHAM
 against
 COOPER.

DECLARATION for breaking and entering dwelling-house, making a noise and disturbance, seizing and taking goods, &c.

Plea; 1st, General Issue.

And that plaintiff was at a court of view of frankpledge appointed constable and upon his refusal to be sworn he was amerced, which amercement being assessed and unpaid, defendant took the goods, &c. in declaration mentioned as a distress for said amercement.

And for further plea in this behalf as to the breaking and entering the said messuage or dwelling house in the said declaration, and making a noise and disturbance in the said house, and staying and continuing therein, making and continuing such noise and disturbance therein for the said space of time in the said declaration mentioned, and seizing and taking of the said goods and chattels in the said first Count of the said declaration, and taking and carrying away the same, and incommoding and interrupting the said plaintiff in the possession, use, and occupation of the said messuage or dwelling-house; and also as to seizing and taking away of the said goods and chattels in the said second Count of the said declaration mentioned, and keeping and detaining the same for the said space of time in that Count also mentioned; and also as to the seizing and taking of the said goods and chattels in the said third Count of the said declaration mentioned, and carrying the same away, they the said defendants, by leave, &c. say, that the said defendants (*ad hoc non*); because they say, that the said

goods

PLEA.—DISTRESS FOR AMERCIAMENT (a).

goods and chattels in the said first, second, and third Counts of the said declaration mentioned are the same goods and chattels, and not other or different, that is to say, at, &c. : And the said defendants further say, that the said messuage or dwelling-house in which, &c. is, and at the said time when, &c. was a certain messuage or dwelling-house, situate and being within and parcel of the manor of Paris Garden, otherwise Old Paris Garden, in the county of Surry, and that Oliver Baron, esquire, long before, and at the said time when, &c. was, and from thenceforth hitherto hath been, and still is seised of and in the said manor, with the appurtenances, in his demesne as of fee, and that the said Oliver, and all those whose estates he now hath, and at the said times when, &c. had of and in the said manor, with the appurtenances, have had and held, and from time whereof the memory of man is not to the contrary have been used and accustomed to have and hold a certain court of view of frankpledge of the same manor of all things thereto belonging within the said manor of all the inhabitants and residents within the said manor, holden twice in every year, to wit, within three weeks of the feast of Saint Michael the Archangel, and again within one month after the feast of the Annunciation of the Blessed Virgin Mary, before the steward of the said court for the time being, as to the same manor, with the appurtenances, belonging : And the said defendants further say, that within the said manor there now is, and from time whereof the memory of man is not to the contrary there hath been a certain ancient and laudable custom there used and approved of within the said manor, that is to say, that the jurors of the court of the view of frankpledge charged and sworn in the same court to enquire and present those things which to the same court belong to be enquired and presented, have used and been accustomed to elect and appoint at the same court holden within the same manor, within three weeks after the feast of Saint Michael the Archangel yearly, four other more sufficient men of the inhabitants and residents of the same manor into the office of constables, to exercise the said office of constables within the precincts of the said manor for one whole year next after such election or appointment, or until other persons have been elected or appointed in their stead, and that all such inhabitants and residents who have been elected and appointed have, upon due notice having been given to him or them of such his or their election and appointment, been sworn into the said office of constable in form aforesaid, if no reasonable cause has been shewn to the contrary thereof, and that the jurors aforesaid, so sworn as aforesaid, during all the time last aforesaid have in the same court presented, and have used and been accustomed to present in the same court any person or persons who have or has been so elected and appointed as aforesaid, and has or have had due notice of such his or their election or appointment, and has or have without sufficient cause being sworn to the contrary thereof refused to accept and serve the said office in

(a) View of frankpledge.

form

TRESPASS.—DISTRESS—AMERCIAMENT.

form aforeſaid, and reaſonably to amerce any perſon or perſons offending in the ſaid premiſes for ſuch his or their offence, for which ſaid amerciament, and the ſame having been firſt aſſeſſed by the aſſeſſors of the ſame court for the time being, the ſaid Oliver Baron, and all thoſe whoſe eſtates he now hath, and at the ſaid times when, &c. had of and in the ſaid manor, with the appurtenances, for and during all the time whereof the memory of man is not to the contrary, have been uſed and accuſtomed to diſtrain any goods or chattels of ſuch perſon or perſons offending, found within the ſame manor, and the ſaid goods and chattels ſo diſtrained within the ſame manor to detain until the lord of the manor for the time being hath been fully ſatiſfied for ſuch amerciament or amerciaments: And the ſaid defendants further ſay, that the ſaid plaintiffs, long before the ſaid time when, &c. or either of them, to wit, on the nineteenth of October 1781, and continually from thenceforth was, and ſtill is an inhabitant and reſident within the ſame manor and the ſaid precinct, and a fit and proper perſon to be elected and choſen into the office of one of the conſtables within the ſaid manor aforeſaid, and that before the time when, &c. or either of them, to wit, at a court of view of frankpledge of the ſaid Oliver of his ſaid manor, holden for the ſaid manor at the houſe of Matthew Plant, known by the ſign of the King's Arms, ſituate and being within the ſaid manor, according to the cuſtom of the ſaid manor, within three weeks after the feaſt of Saint Michael the Archangel, to wit, on the nineteenth of October 1781 aforeſaid, before Edward Wilmot, gentleman, he the ſaid E. W. then, and from thenceforth hitherto being ſteward of the ſaid O. B. of the ſaid court, by J. K. &c. &c. good and lawful men, and then being inhabitants and reſidents within the ſaid manor and in the ſaid court by the ſaid ſteward charged and ſworn the jurors to enquire and preſent thoſe things which to the ſaid court of view of frankpledge belong to be enquired and preſented, the ſaid plaintiff was elected and appointed by the name of J. C. to be one of the conſtables within the ſaid manor for one whole year then next following, or until another ſhould be elected and choſen inſtead of him the ſaid plaintiff, afterwards, to wit, on the ſaid, &c. at, &c. had due notice; yet he the ſaid plaintiff then and there wholly reſuſed, and from thenceforth hitherto hath wholly reſuſed to be ſworn into the office into which he was ſo elected and appointed as aforeſaid to ſerve the ſaid office without any reaſonable cauſe having been as yet ſhewn to the contrary thereof; and thereupon afterwards, to wit, on, &c. it was in the ſaid court preſented by the jurors ſo ſworn as aforeſaid, according to the cuſtom aforeſaid, that the ſaid plaintiff, by the name and deſcription of James Cunningham, had been elected and appointed to ſerve the office of conſtable as aforeſaid, and had reſuſed to ſerve the ſaid office, for which offence he the ſaid plaintiff, by the name and deſcription of J. C. according to the cuſtom aforeſaid, was by the jurors aforeſaid then and there in the ſame

DISTRESS FOR AMERCIAMENT.

211

same court amerced to one pound one shilling; which said amerciamment was afterwards, to wit, at the court of view of frankpledge of the said O. B. of his aforesaid manor holden for the said manor at the house of Vincent Williams, known by the sign of the Mitre, situate and being within the said manor according to the custom of the said manor, within one month next after the feast of the Annunciation of the Blessed Virgin Mary, to wit, on the twenty fourth of April 1782, before the said E. W. gentleman (he the said E. W. then and there being such steward as aforesaid by J. S. and J. W. they the said J. S. and J. W. then and there being assessors at the said last-mentioned court, and then and there for that purpose being duly elected and sworn, assessed and affirmed to the sum of one pound one shilling, whereof the said plaintiff afterwards, to wit, on, &c. had notice, to wit, at, &c. and was then and there required by the said J. Cooper, then bailiff of the said O. B. of the said manor, to pay to the said O. B. the said amerciamment so assessed as aforesaid, which the said plaintiff then and there from thenceforth hitherto hath refused to pay to the said O. B.; and thereupon the said E. W. afterwards, to wit, on the fourteenth day of May 1782, at, &c. he the said E. W. then and still being the said steward of the said O. B. of the said court as aforesaid, and the said sum of one guinea so then being unpaid, made his certain precept in writing under his hand to the said J. Cooper, who then and upon, &c. thenceforth hitherto hath been and still is the bailiff of the said O. B. of the said manor; by which said precept the said E. W. commanded the said J. Cooper (amongst other things) to levy by distress of the goods and chattels of the said plaintiff in the said precept called J. Cunningham the said amerciamment of one guinea, and that the said J. Cooper should answer thereto when thereto required; by virtue of which said precept the said J. Cooper so being bailiff as aforesaid, and the said W. L. &c. as his servants, and in his aid and assistance for the due execution of the said precept afterwards, to wit, on the same, &c. in the said declaration mentioned, because the said plaintiff had not paid the said sum of one guinea peaceably and quietly, entered into the said messuage or dwelling-house through the outer door thereof, the same door then and there being open, and then and there seized the said goods and chattels in the said declaration mentioned, then and there found within the said messuage or dwelling-house within the said manor, and within the said precincts of the said court for and in the name of a distress for the said one pound one shilling for the said amerciamment so being in arrear and unpaid as aforesaid, and carried away the same, and kept and detained the same, and still keeps and detains the same as a distress for the said amerciamment, the same still remaining unpaid according to the exigency of the said precept, as it was lawful for them to do for the cause aforesaid, and in so doing they the said defendants did necessarily make a little noise and disturbance in the said messuage or dwelling-house,

TRESPASS.—REPLICATION.—(DISTRESS—

and said and continued therein making and continuing such little noise and disturbance for the space of time in the said declaration in that behalf mentioned, and did thereby a little incommode and interrupt the said plaintiff in the possession, use, and occupation of his said messuage or dwelling-house, doing as little damage as they possibly could on the occasion aforesaid, which are the same breaking and entering the said messuage or dwelling-house in the said declaration mentioned, and making noise and disturbance in the said house, and staying and continuing therein, making and continuing such noise and disturbance therein for the said space of time in the said declaration mentioned, and seizing and taking the said goods and chattels in the said first Count of the said declaration mentioned, and carrying away the same, and incommoding and interrupting the said plaintiff in the possession, use, and occupation of his aforesaid messuages or dwelling-house, and seizing and taking the said goods and chattels in the said second Count of the said declaration mentioned, and keeping and detaining the same for the said space of time in that Count also mentioned, and seizing and taking of the said goods and chattels in the said third Count of the said declaration mentioned, and carrying away the same, whereof the said plaintiff hath above complained against the said defendants; and the said defendants aver, that the said person so elected and appointed by the name of J. Cunningham to be one of the constables within the said manor, and refused to be sworn into the said office, or serve the said office as aforesaid, and who was to represent amerced as aforesaid, the said person called and named in the said precept J. C. and the said J. C. are one and the same person, and not divers or different, to wit, at the parish aforesaid in the said county; and this the said defendants, &c.; wherefore, &c.

THO. WALKER.
GEO. WOOD.

Michaelmas Term, 23. Geo. III.

Replication,
protesting insufficiency, *de injuria sua propria absque tali causa;* and traverse of plaintiff's refusal to be sworn.

And the said John Cunningham, as to the said plea of the said defendants by them first above pleaded, and whereof they have put themselves upon the country, doth the like, &c.: And as to the said plea of the said defendants by them secondly above pleaded in bar as to the trespass in the introduction thereof mentioned, and thereby attempted to be justified, says, that notwithstanding any thing in that plea alledged (*precludi non*) in respect of the said trespass therein mentioned against them the said defendants; because protesting that the said plea about the matters therein contained, in manner and form as the same are above alledged and set forth, are insufficient in law to preclude from having, &c. in respect to the said trespass in the said plea mentioned against them the said defendants; protesting also, that no such presentment as in the said plea mentioned was ever made to the said court of view of frankpledge in the said plea mentioned; protesting also, that the said plaintiff had never any notice of the said amerciament and

affect-

FOR AMERCIAMENT)—REJOINDER.

affirmment in the said plea mentioned, or either of them, and that he was never requested to pay the said amercement as in the said plea is alledged; protesting also, that no such precept as in the said plea is mentioned was ever made by the said E. W. in the said plea mentioned to the said J. Cooper, in manner and form as the said defendants have above in their said plea by them secondly above pleaded in bar alledged; for replication in this behalf the said plaintiff says, that the said defendants, on, &c. at, &c. of their own wrong broke and entered the said messuage or dwelling-house in the said declaration mentioned, and made a noise and disturbance therein for the said space of time in the said declaration mentioned, and seized and took the said goods and chattels in the said first Count of the said declaration mentioned, and took and carried away the same, and incommoded and interrupted the said plaintiff in the possession, use, and occupation of his aforesaid messuage or dwelling-house, and also seized and took the said goods and chattels in the said second Count of the said declaration mentioned, and kept and detained the same for the said space of time in that Count also mentioned, and also took and seized the said goods and chattels in the said third Count of the said declaration mentioned, and carried away the same in manner and form as the said plaintiff hath above thereof complained against them; without this, that he the said plaintiff refused to be sworn into the said office into which he was so elected and appointed as aforesaid, or to serve the said office in manner and form as the said defendants have above in the said plea by them secondly above pleaded in bar as aforesaid alledged; and this, &c.; wherefore he prays judgment and his damages, by reason of the said trespass in the said second plea of the said defendants hereinbefore mentioned, to be adjudged to him, &c.

NASH GROSE.

And the said defendants, as to the said plea of the said plaintiff by him above pleaded in reply to the said plea of the said defendants by them secondly above pleaded in bar, as to the said supposed trespasses in the introduction thereof mentioned and thereby justified, say, that the said plaintiff, by reason of any thing by him in his plea alledged (*actio non*) in respect to the supposed trespass in the said plea secondly above pleaded in bar mentioned; because they as before say, that the said plaintiff did refuse to be sworn into the said office into which he was so elected and appointed as aforesaid, and to serve the said office in manner and form as the said defendants have, &c.; and of this, &c.

THO. WALKER.

This cause was tried before Lord Mansfield, Summer Assizes 1783, and verdict for defendants.

The plaintiff moved an arrest of judgment on the ground of several objections which were made to the special plea, and

the same was twice argued very elaborately, but the court in Hilary term 1784, gave judgment for defendant's obviating all the objections taken to the plea.

Michaelmas Term, 19. Geo. III.

Plea 1st, general issue; 2d, that plaintiff took the cattle damage feasant, and impounded them as a distress for the damage. } **MAW AND ANOTHER** } **DECLARATION** for breaking
against } and entering close, &c. as covered in
KELSEY. } the plea.

First Plea, general issue: And for further plea in this behalf as to the breaking up, depasturing, treading down, trampling upon, consuming, and spoiling with the said cattle in the said declaration mentioned the said grass in the said declaration secondly mentioned then growing and being in the said forty acres of land called the Carr Ground, otherwise the Participart Ground of the said Robert in the said declaration mentioned, the said defendant by leave, &c. says, that the said plaintiff (*actio non*); because he says, that the said plaintiff, at the time when the said cattle were eating up, depasturing, treading down, trampling upon, consuming, and spoiling the said grass and corn in the said declaration secondly mentioned in the said place in the said declaration mentioned in which, &c. took the said cattle doing damage there, and impounded them as a distress for the said damage, to wit, at the parish aforesaid; and this, &c. wherefore, &c.: And for further plea in this behalf as to the eating up, &c. &c. the said defendant, by like leave, &c. says, that the said plaintiff (*actio non*); because he says, that the said plaintiff, at the time when the said cattle were eating up, &c. &c. the said grass and corn in the said declaration secondly mentioned in the said place in the said declaration in which, &c. took the said cattle doing damage there, and impounded the same in a certain pound there as a distress for the said damage, and kept and detained the same cattle so impounded until the same were released and discharged from and out of the said pound by and with the consent of the said plaintiff, to wit, at, &c.; and this, &c.; wherefore, &c.: And for further plea in this behalf as to the eating up, &c. &c. the said defendant, by like leave, &c. says, that the said plaintiff (*actio non*); because he says, the said plaintiff, at the time when the said cattle were eating up, &c. the said grass and corn in the said declaration secondly mentioned in the said plea in the said declaration mentioned, in which, &c. took cattle there doing damage there, and impounded the same as a distress for the damage, and kept and detained the said cattle so impounded until the same were replevied, to wit, at, &c.; and this, &c.; wherefore, &c. [Fifth plea prescribes in right of a freehold messuage or tenement, in which defendant is seised for common of pasture for all commonable cattle at all times upon a common called Ouston, and contiguous to the *locus*, and divided from it by certain dikes and fences which immemorially have been and are maintainable and repairable by the owners and occupiers of the *locus*, that the same were ruinous, and that defendant's cattle escaped from the common through the defect of the dikes and hedges into the *locus*, and committed the trespasses; 6th Plea, same as to another common called Haxey.]

3d plea, that plaintiff took the cattle damage feasant, and impounded them in a certain pound as a distress for the damage, and kept them so impounded until released by plaintiff's consent.

4th Plea, that plaintiff took the cattle damage feasant, and impounded them till replevied.

5th Plea, that plaintiff took the cattle damage feasant, and impounded them as a distress for the damage, and kept them so impounded until released by plaintiff's consent.

FOSTER BOWER.

And

And the said plaintiff, as to the said plea of the said defendant by him secondly above pleaded in bar as to the eating up, &c. &c. by the said defendant above acknowledged to have done, says, that he by reason of any thing in that plea above alledged (*precludi non*); because he says, that true it is that he the said plaintiff, at the time when the said cattle were eating up, &c. the said grass and corn in the said declaration secondly mentioned, in the said place in the said declaration mentioned in which, &c. took the said cattle doing damage there, and impounded the same as a distress for the said damage, as the said defendant in his said second plea by him secondly above pleaded in bar hath alledged; but the said plaintiff further says, that after the said impounding of the said cattle for the said damage, and whilst the same so remained so impounded, and before the exhibiting of the said bill of the said plaintiff, to wit, on the first of August 1778, the said defendant took and led away the said cattle from and out of the said pound without the licence and consent of the said plaintiff, and against his will, without making any satisfaction to the said plaintiff for the damage done by the said cattle, or replevying the said cattle by due course of law, to wit, at, &c.; and this, &c.; wherefore the said plaintiff, inasmuch as the said defendant hath above acknowledged the committing of the trespass aforesaid, prays judgment and his damages, by reason of the committing of that trespass, to be adjudged to him, &c.: And the said plaintiff, as to the said plea of the said defendant by him thirdly above pleaded as to eating up, &c. by the said defendant above acknowledged to have been done, says, that he by reason, &c. (*precludi non*); because he says, that true it is that the said plaintiff, at the said time when the said cattle were eating up, &c. the said grass and corn in the said declaration secondly mentioned, in the said place in the said declaration mentioned, in which, &c. took the said cattle doing damage there, and impounded the same in a certain pound as a distress for the said damage, as the said defendant hath in his said third plea above alledged; but the said plaintiff further saith, that after the said impounding of the said cattle, and whilst the same remained so impounded as aforesaid, and before the exhibiting of the bill of the said plaintiff, to wit, on the said first of August 1778, at, &c. the said defendant of his own wrong took and led away the said cattle from and out of the said pound; without this, that the said cattle were released and discharged from and out of the said pound by and with the consent of the said plaintiff, in manner and form as the said defendant hath in his said third plea above alledged; and this, &c.; wherefore, &c.: And the said plaintiff, as to the said plea of the said defendant by him fourthly above pleaded in bar as to eating up, &c. by the said defendant above acknowledged to have been done, says, that by reason of, &c. (*precludi non*); because he says, that true it is that the said plaintiff, at the time when the said cattle were eating up, &c. the said grass of the said plaintiff in the said declaration secondly mentioned in the said place in the said declaration

Replication to
2d plea, that
whilst cattle re-
mained im-
pounded, defen-
dant led them
away without
plaintiff's con-
sent.

To the 3d plea,
that defendant,
of his own
wrong, took and
led away the cat-
tle out of the
pound; with a
traverse of the
cattle's being
discharged out of
the pound with
plaintiff's con-
sent.

To the 4th plea,
that defendant,
of his own
wrong, took and
led away the
cattle out of the
pound; with a
traverse of the
cattle's being
replevied.

mentioned, in which, &c. took the said cattle doing damage there, and impounded the same in a certain pound as a distress for the said damage, as the said defendant hath in his said fourth plea above alledged; but the said plaintiff further says, that after the said impounding of the said cattle, and whilst the same remained so impounded as aforesaid, and before the exhibiting, &c. to wit, on, &c. at, &c. the said defendant of his own wrong took and led away the said cattle from and out of the said pound; without this, that the said cattle were replevied in manner and form as the said defendant hath in his said plea fourthly above pleaded in bar alledged; and this, &c.; wherefore, &c. [Replication to fifth plea, that defendant of his own wrong committed the several trespasses; with a traverse of the cattle escaping from Ouston through the defect of dike and fences. Same replication to the sixth plea as to the Haxey Common.]

A. CHAMBER.

Easter Term, 19. Geo. III.

Rejoinder, that the cattle were replevied, &c. And the said defendant, as to the said plea of the said plaintiff by him above in reply pleaded to the said plea of the said defendant by him secondly above pleaded in bar as to the eating up, &c. &c. by the said defendant above supposed to be acknowledged to have been done, says, that the said plaintiff, by reason of any thing therein above alledged (*actio non*); because he says, that the said cattle, after the same had been taken and impounded for the said supposed damage as aforesaid, were released and discharged from and out of the said pound by and with the consent of the said plaintiff, to wit, at, &c.; without this, that the said defendant took and led away the said cattle from and out of the said pound without the licence and consent of the said plaintiff, and against his will, in manner and form as the said plaintiff hath in and by that plea by him above in reply pleaded alledged; and this, &c.; wherefore, &c. : And the said defendant, as to the said plea of the said plaintiff by him above in reply pleaded to the said plea of the said defendant by him thirdly above pleaded in bar as to eating up, &c. &c. by the said defendant above supposed to be acknowledged to be done, says, that the said plaintiff, by reason, &c. (*actio non*); because he saith, defendant (as before) says that the said cattle were released and discharged from and out of the said pound by and with the consent of the said plaintiff in manner and form as the said defendant has in his said plea thirdly above alledged; and of this he puts himself upon the country; and the said plaintiff doth the like: And the said defendant, as to the said plea of the said plaintiff above in reply pleaded to the said plea of the said defendant by him fourthly above pleaded in bar as to the eating up, &c. &c. above supposed to be acknowledged by the said defendant to be done, says, that he by reason, &c. (*actio non*); because he the said defendant (as before) says that the said cattle were replevied in manner and form as the defendant hath in his said plea fourthly above pleaded in bar alledged; and of this he puts himself upon the

To the 3d replication, issue on traverse.

To the 4th replication, issue on traverse.

the country, and the said plaintiff doth the like, &c. [Rejoinder to fifth and sixth replication, taking issue upon the traverses respectively.]

FOSTER BOWER.

Trinity Term, 19. Geo. III.

Surrejoinder to the rejoinder to the replication to the second plea, taking issue, omits traverse.

A. CHAMBRE.

The defendant, on the trial of this cause, obtained verdict.

Plea 1st, Not Guilty: And for further pleas to the seizing, driving, taking away, and selling the said ox in the said declaration mentioned above supposed to have been done by the said defendants, by leave, &c. (*actionem*); because they say, that before and at the said time when, &c. the right honourable Alice, lady viscountess Dowager of Windsor was and still is seized of and in the feignory or lordship of Mythin, in the county of Glamorgan, in her demesne as of fee, and that the said Christopher Basset, deceased, in the said declaration mentioned, before the said time when, &c. was seized of and in a certain tenement, to wit, a messuage and divers, to wit, forty acres of land called Mandye, lying and being in the parish of Lantre, part in the county of Glamorgan aforesaid, within the said feignory in his demesne as of fee, and held the same of the said Alice viscountess dowager Windsor, then lady of the said feignory or lordship, and of a certain yearly rent, to wit, two shillings and elevenpence, and also among other services by the service of rendering after the death of every tenant of the said tenement dying seized thereof the best beast that was the property of such tenant at the time of his death in the name of an heriot, if such tenant hath not, at the time of his death, been possessed of live beasts at the time of his or her death, then the sum of five shillings for and in lieu of an heriot, of which services the said Lady viscountess dowager Windsor was seized by the hands of the said C. Basset now deceased, as by the hands of her very tenant in her demesne as of fee: And the said defendants further say, that the said C. Basset now deceased, being so of the said tenement, with the appurtenances, afterwards and before the said time when, &c. to wit, on the fourteenth of December 1760, at Ross aforesaid, in the county of G. aforesaid, died seized of such his estate therein, and at the time of his death was possessed of the said ox in the said declaration mentioned as of his own proper ox, which said ox was the best beast of the said C. Basset, now deceased, at the time of his death; by reason whereof an heriot happened and fell to the said Alice lady, &c.; and because the said heriot, after the death of the said C. B. was in arrear to the said Alice lady, &c. and not delivered to her, they the said defendants, as the ser-

Præ, that Lady Windsor seized in fee of the lordship of M.

C. Basset, deceased, seized in fee of a messuage and land within said lordship, and held same of lady Windsor at the rent of 2s. 11d. and a heriot;

of which services lady W. seized in fee by the hands of C. B.

C. B. died seized,

and at his death was possessed of said ox in declaration mentioned, by reason whereof heriot fell to lady W.

and because the said Alice lady, &c. and by her command afterwards, to wit, on the same, &c. at, &c. did sell the same for the use of the said Alice lady, &c. as it was lawful for them to do for the cause aforesaid, which are the same seizing, taking, and driving away, and selling the said ox in the said declaration mentioned, whereof the said plaintiffs have above thereof complained against them; and this, &c.; wherefore, &c.: And for further plea in this behalf as to the seizing, &c. by like leave, &c. (*actio non*); because they say, that before and at the said time when, &c. the right honourable lady viscountess dowager Windlesor was and still is lady of the feignory or lordship of Myshin, with the appurtenances, in the county of G. and that the said C. Bassett, deceased, in the said declaration mentioned in his lifetime, long before the said time when, &c. to wit, on the first of January 1758, was seised of and in certain lands and tenements, with the appurtenances, lying within the feignory or lordship in his demesne as of fee, and held the same of the said Alice lady, &c. then lady of the said feignory or lordship, as of that her feignory or lordship by certain

3d Plea.

Lady Windlesor seised of the lordship of M.

C. B. seised of lands in said lordship,

and held same of lady W. by rent and amongst other services a heriot.

C. B. died, &c. &c. as in second plea.

4th Plea, lady W. seised in the lordship of M.

C. Bassett, a free tenant of said lordship,

and seised of a freehold tenant,

and held the same of lady W. by rent, &c.

Prescription in the lord or lady of said lordship upon the death of every free tenant to seize the best beast as a heriot, and if no best, then 5s. to be paid in lieu.

yearly rents, and also amongst other services by the service of rendering after the death of every tenant of the said lands and tenements dying seised thereof of the best beast that was the property of such tenant at the time of his death in the name of an heriot, of which services the said Alice lady, &c. was seised by the hands of the said C. Bassett, now deceased, in his lifetime, as by the hands of her very tenant: And the said defendants further say, that the said C. Bassett, now deceased, being so seised, &c. [the same as second plea *ad finem*]: And for further plea as to the seizing, &c. (*actio non*); because they say, that before and at the said time when, &c. the right honourable Alice, &c. was and still is seised of and in the said feignory or lordship of Myshin, in the county of G. in her demesne as of fee; and that the said C. Bassett, deceased, in the said declaration named before the said time when, &c. to wit, on the first of January 1762, was a free tenant of the said feignory or lordship, and seised of and in a certain freehold tenement, to wit, a messuage and divers, to wit, forty acres of land, with the appurtenances, lying and being in the said parish of T. in the county of G. and within the said feignory or lordship in his demesne as of fee, and held the same of the said Alice lady, &c. the lady of the said feignory or lordship as of that her feignory or lordship aforesaid by a certain rent and certain services, parcel of the said feignory or lordship: And the said defendants further say, that within the said feignory or lordship there now is, and from time whereof, &c. there hath been a certain ancient and laudable custom there used and approved of, that is to say, that the lord or lady of the said feignory or lordship for the time being, from time whereof, &c. hath had and taken, and hath been used to have and take, and of right ought to have and take upon the death of every free tenant dying seised of any freehold lands, tenements, or hereditaments holden of the lord or lady of the feignory

nory or lordship for such lands, rents, or tenements, whereof such tenant died so seized of the best beast that was the property of such tenant at the time of his death, for and in the name of an heriot, *if such free tenant so dying hath at the time of his death any live beast, and if the tenant so dying hath not had at the time of his death any live beast, then the sum of five shillings for and in the lieu of an heriot* and the lord or lady of the said feignory or lordship for the time being during all the time whereof, &c. hath seized, and been used and accustomed to seize the best beast of such free tenant at the time of his death for such heriot wheresoever such beast hath or could be found: And the said defendants further say, that before the said time when, &c. the said C. Bassett, now deceased, being such free tenant of the said feignory or lordship, and so seized of such freehold tenement as aforesaid, and at the time of his decease was possessed of the said ox in the said declaration mentioned as of his own proper ox, which said ox was the best beast of the said C. Bassett at the time of his death, to wit, at &c.; wherefore they the said defendants, as servants of the said lady Windsor, and by her command at the said time when, &c. did seize, take, and drive away the said ox in the said declaration mentioned, and afterwards on the same day and year took the same for the use of the said lady Windsor, to wit, at, &c. as it was lawful for them to do for the cause aforesaid, which are the same, &c. whereof, &c.; and this, &c.; wherefore, &c. [Fifth plea same as last, omitting what is in *Italic.*]

C. B. died seized.

JAMES WALLACE.

And the said plaintiffs, as to the said plea of the said defendants by them secondly above pleaded in bar as to the seizing, &c. say, that they the said plaintiffs, by reason, &c. (*proculdum non*); because they say, that true it is that before and at the said time when, &c. the right honourable Alice, &c. was and still is seized of and in the feignory or lordship of Mythin, in the said county of G. in her demesne as of fee; and that the said C. Bassett, in the said declaration mentioned, in his lifetime, before the said time when, &c. to wit, on the first of January 1765, was seized of and in a certain messuage and divers, to wit, forty acres of land called Mandyke, and lying and being in the parish of Lonsilant, in the county of G. aforesaid, within the said feignory in his demesne as of fee, and held the same of the said Alice lady, &c. then lady of the said feignory or lordship as of that her feignory or lordship; but the said plaintiffs further say, that whenever any tenant of the same tenements hath happened or may happen to die out of that feignory or lordship, not being at the time of his death possessed of any beast within the said feignory or lordship, no heriot whatsoever hath been or is of right due or payable to the said lord or lady of the said feignory for or in respect of the same tenement, but only five shillings in lieu thereof, and that the said C. Bassett did die out of the said feignory or lordship, to wit, at Ross aforesaid

Replication.

Admit lady W.

admits C. B.'s

but say, that when tenant died out of lordship, and not possessor of any beast within the lordship, no heriot is paid, but only 5s. in lieu.

not

C. Ballet died out of lordship, and not possessed of any beast within the lordship.

Defendant, *de injuria sua* seized and sold the ox. Traveller of the tenure and custom.

not being at the time of his death possessed of any beast within the said feignory or lordship: And said plaintiff's further say, that the said defendants of their own wrong, at the said time when, &c. seized, took, drove away, and sold the said ox of the said plaintiffs in the said declaration mentioned, in manner and form as the said plaintiffs have above in that behalf complained; without this, that the said C. Ballet, deceased, in his lifetime, held his said tenement of the said Alice lady, &c. as of that her feignory or lordship, by a certain yearly rent; and also amongst other services, by the service by sending after the death of every tenant of the said tenement dying seized thereof, the best beast that was the property of such tenant at the time of his death in the name of an heriot, if such tenant hath, at the time of his or her death, been possessed of any live beast, and if such tenant so dying hath not been possessed of any live beast at the time of his or her death, then the sum of five shillings for and in lieu of an heriot, in manner and form as the said defendants have by the said plea in that respect above alleged; and this, &c.; wherefore inasmuch as the said defendants have above acknowledged the committing of the said trespass, the said plaintiffs pray judgment and their damage, by reason of the committing the said trespass, to be adjudged to them, &c. [Replication to third plea as in foregoing, and traverse of the tenement in third plea alleged]: And as to the said plea of the said defendants fourthly above pleaded in bar as to the seizing, taking, driving away, and selling the said ox in the said declaration mentioned, to the said plaintiffs say, that by reason, &c. (*procludi non*); because protesting that the same plea in manner and form as the same is above pleaded, and the matters therein contained, are intendment in law; for replication in this behalf the said plaintiffs say, that true it is that before

To 4th plea.

Protesting insufficiency, &c.

admits lady W.'s seisin,

and that C. B. was a free tenant.

Defendants *de injuria sua* seized and sold the ox.

and at the said time when, &c. the right honourable Alice, &c. was and still is seized of and in the feignory or lordship of M. in the said county of G. in her demesne as of fee, and that the said C. Ballet, deceased, in the said declaration named, before the said time when, &c. to wit, on the first day of January 1760, was a free tenant of the said feignory or lordship, and seized of and in a certain freehold tenement, to wit, a messuage and divers, to wit, forty acres of land, with the appurtenances, lying and being in the parish of L. in the said county of G. and within the said feignory or lordship in his demesne as of fee, and held the same of the said lady, &c. then lady of the said feignory or lordship as of that her feignory, by a certain rent and certain services, parcel of the said feignory or lordship; but the said plaintiffs further say, that the said defendants of their own wrong, at the said time when, &c. seized, took, drove away, and sold the said ox of the said plaintiffs in manner and form as the said plaintiffs have above in that behalf complained; without this, that within the said feignory or lordship there now is, and from time whereof, &c. there hath been a certain ancient and laudable custom there used and approved,

ed, that is to say, that the lord or lady of the said seignory or lordship for the time being, from time whereof, &c. hath had and taken, and hath been used and accustomed to have and take, and of right ought to have had and taken, and still of right ought to have and take upon the death of every free tenant dying seised of any freehold lands, &c. [As in fourth plea]. Travese same as last to fifth plea.]

W. H. ASHHURST.

First plea, General Issue: And for further plea in this behalf

as to the breaking and entering the said dwelling-house in the said first Count of the said declaration mentioned, in which, &c. remaining and continuing therein for twenty minutes, part of the time in the said first Count of the said declaration mentioned, and during that time disturbing and disquieting the said Thomas Yates in the peaceable and quiet possession of the said dwelling-house, and taking and carrying away the said goods and chattels in the said first Count of the said declaration mentioned above supposed to have been done by the said defendants, they the said defendants, by leave, &c. (*ad hoc*); because they say, the city of

Carlisle, situate in the said county of Cumberland, at the said time when, &c. was, and from time whereof, &c. hath been and still is an ancient city, and that the citizens of the said city from

time whereof, &c. until the twenty-first day of July, in the thirteenth year of the reign of Charles the First, late king of England, &c. were an ancient corporation and body corporate in deed, fact, and name, and had been and were confirmed by divers letters-patent of divers late kings and queens at divers times by divers names of incorporation, that is to say, by the name of the citizens of the city of Carlisle, and also by the name of the mayor and citizens of the city of Carlisle, on which twenty-first of July, in the thirteenth, &c. the said citizens of the said

city of Carlisle were by the said late king by his letters-patent bearing date at Canbury on the same day and year last aforesaid, and which, sealed with the great seal of England, the defendants now bring here into court, were duly incorporated by the name of the mayor, aldermen, bailiffs, and citizens of the city of Carlisle: And the said defendants further say, that the citizens of the said city of Carlisle for the time being, from time whereof the memory of man is not to the contrary, until the said

twenty-first of July, in the thirteenth year of the reign of the said late king Charles the First by their several names of incorporation first and secondly above-mentioned respectively, and the mayor, aldermen, bailiffs, and citizens of the said city of Carlisle continually from thenceforth hitherto have been, and have used and been accustomed to have, and of right ought to have, and the said

mayor, aldermen, bailiffs, and citizens of the said city still of right ought to have a certain court-leet and view leet and view

ought to have a certain court-leet and view leet and view

ought to have a certain court-leet and view leet and view

ought to have a certain court-leet and view leet and view

Trave se ofauf-
tem to pay the
heriot.

The city of Carlisle an ancient city.

Citizens thereof until the 21st of July, 13. Car. 1. an ancient corporation

on the said 21st of July, 2. Car. 1, by letters-patent.

Mayer, &c. ought to have a court-leet.

of frankpledge in the said city, and all things which to a court-leet and view of frankpledge belong, of all the inhabitants and residents within the said city twice a year, to wit, once within a month next after the feast of Easter, and again within a month next after the feast of St. Michael the Archangel, before the mayor and bailiffs of the said city for the time being within the said city yearly to be held: And the said defendants further say, that the said Thomas Yeates, before the said times when, &c. and before the holding of the court-leet hereinafter mentioned, to wit, on the first of January 1768, at the city of Carlisle aforesaid, unlawfully and injuriously did permit and suffer the swine of him the said Thomas Yeates to wander and pass backward and forward in and about divers public streets and common highways there within the jurisdiction of the said court, whereby the said public streets and common highways there were very much obstructed and rendered filthy and unwholesome, so that the liege subjects of our said lord the king could not through the said public streets and common highways go, return, pass, ride, and labour as they ought and were wont to do, to the great damage and common nuisance of all the liege subjects of our said lord the king in the same streets and common highways going, returning, passing, and labouring, and against the peace of our said lord the king, his crown and dignity: And the said defendants further say, that afterwards and before the said time when, &c. to wit, at the said court leet and view of frankpledge of our sovereign lord the now king, holden in the Guildhall in and for the said city, and within the jurisdiction of the said court, and within a month next after the feast of Easter 1768, that is to say, on Monday the fourth of April in the same year, before the said John Pears, then being mayor of the said city; and the said Robert Jackson and Robert Manson then being bailiffs of the said city according to the custom there, by the oath of twelve free and lawful men resident and inhabiting within the said city, and then being in the said court charged and sworn to enquire and make presentment of those things which to the said court leet and view of frankpledge belonged, it was then and there presented in the same court (amongst other things) that the said Thomas Yeates had been guilty of the said nuisance in suffering the said two swine to wander about the streets of said city; wherefore it was considered by the same court there that said Thomas Yeates should be in mercy; wherefore the said Thomas Yeates for that cause was then and there in the same court by the same jury amerced to the sum of thirteen shillings and fourpence of lawful money of Great Britain, which said amercement by two assessors, to wit, Richard Hodgson and William Hodgson, assessors in the same court duly assailed to the like sum of thirteen shillings and fourpence, of all which premises the said Thomas Yeates afterwards and before the time when, &c. on the same day and year last aforesaid, at the city of Carlisle aforesaid, had notice: And the said defendants further say, that the said amercement being unpaid afterwards and before the said time when, &c. to wit, on the twenty-sixth of July 1768, at the city of Carlisle aforesaid,

Plaintiff permitted his swine to wander about the streets.

Plaintiff presented at the court-leet the nuisance.

and amerced, &c.

and duly assailed.

The amercement being unpaid, the mayor issued this precept directed to the serjeant at mace.

aforesaid, the said John Pears still being mayor of the said city for the levying of the said amerciamment duly and according to the custom of the said court caused to be made and issued his certain precept under his hand and seal of office as mayor of the said city, bearing date the same day and year last aforesaid, directed to the said Thomas Wallis, Joseph and Robert Holliday, serjeants at mace within the said city, he the said John Pears, as such mayor as aforesaid, being the proper officer for the making and issuing such precepts; and the said Thomas Wallis, Joseph and Robert Holliday then and there being the proper officers for executing the same, by which said precept the said mayor authorized and required the said Thomas Wallis, Joseph and Robert Holliday (amongst other things) to levy by distress of the goods of the said Thomas Yeates the same sum of thirteen shillings and fourpence by him unpaid as aforesaid, and that they should answer the same when thereunto required, and then and there delivered the said precept to the said Thomas Wallis, Joseph and Robert Holliday, so being serjeants at mace within the said city, and the proper officers for executing the same as aforesaid, to be executed in due form of law, and then and there requested the said Thomas Wallis, Joseph and Robert Holliday to execute the same; by virtue whereof they the said Thomas Wallis, Joseph and Robert Holliday so being serjeants at mace and the proper officers for executing the same as aforesaid, and the said Robert Jackson and Robert Nantson in their aid and assistance and by their aid and assistance, and by their command at the said time when, &c. the said amerciamment being unpaid, entered into the said dwelling-house in which, &c. by the outer door thereof, the same dwelling-house, in which, &c. being within the said city of Carlisle, and within the jurisdiction of the said court, and the outer door thereof then and there being open in order to levy by distress of the goods of the said Thomas Yeates, then and there being in the said dwelling-house, the said sum of thirteen shillings and fourpence on him imposed as an amerciamment as aforesaid, and for that purpose did necessarily take and carry away the said goods of the said Thomas Yeates in the said first Count of the said declaration mentioned then found in the said dwelling-house in which, &c. and within the jurisdiction of the said court, as it was lawful for them to do for the cause aforesaid, and in so doing they the said Robert Jackson, Robert Nantson, Thomas Wallis, Robert and Joseph H. did necessarily and unavoidably remain and continue in the said dwelling-house in which, &c. for the said space of twenty minutes, part of the said time in the said declaration mentioned, the same being a reasonable time for that purpose, and during that time did necessarily and unavoidably a little disturb and disquiet the said Thomas Yeates in the peaceable and quiet possession of the said dwelling-house, doing as little damage as they possibly could on that occasion, and which said goods they the said Thomas Wallis, Joseph and Robert afterwards, to wit, on the said twelfth of September 1768, at the city of Carlisle aforesaid, sold for six shillings

Precept delivered to the serjeants at mace.

shillings and sixpence, which said six shillings and sixpence they, the said Thomas Wallis, Joseph and Robert, then and there answered and paid to the said mayor, aldermen, bailiffs, and citizens of the said city of Carlisle, in part of the said amercement being thereunto then and there required, according to the said precept, which are the same, &c. whereof, &c.; and this, &c.; wherefore, &c.: And for further plea in this behalf, as to the breaking and entering, &c. &c. above supposed to have been done by the said defendants, they the said defendants, by like leave, &c. (*assio non*); because they say that the said corporation, that is to say, the citizens of the said city of Carlisle for the time being, from time whereof, &c. until the said twenty-first of July, in the said thirteenth year, &c. by their names first and secondly above mentioned respectively; and the mayor, aldermen, bailiffs, and citizens of the said city of Carlisle continually from thenceforth hitherto have had and have used, and been accustomed to have, and of right ought to have; and the said mayor, aldermen, bailiffs, and citizens of the said city still of right ought to have a certain other court leet and view of frankpledge of the said city, and all things which to a court leet and view of frankpledge belong of all the inhabitants and residents within the said city once a year, within a month next after the feast of St. Michael the Archangel, before the mayor and bailiffs of the said city for the time being within the said city yearly to be held, and which the said mayor and bailiffs for the time being, before whom the said court hath been so held as aforesaid, have from time to time, during all the time whereof, &c. used and been accustomed to adjourn such court until Monday next after the feast of Easter, commonly called Easter Monday, then next following before the mayor and bailiffs of the said city for the time being within the said city to be further held, according to the custom there; and the said defendants further say, that before the said time, when, &c. to wit, on Monday the twenty-sixth of October, in the eighth year of the reign of our sovereign lord the now king, being within one month next after the feast of St. Michael the Archangel in that year, the said last-mentioned court leet and view of frankpledge of our sovereign lord the king was holden at the Guildhall in and for the said city before the said John Pears, then being mayor of the said city, and the said Robert Jackson and Robert Nanton, then being bailiffs of the said city, according to the custom there, which the same court was then and there duly, and according to the said custom, adjourned by the said then mayor and bailiffs of the said city, before whom the same was held as aforesaid until Monday next after the feast of Easter, commonly called Easter Monday, then next following before the mayor and bailiffs for the said city for the time being, within the said city to be further held, according to the custom there: And the said defendants further say [Here insert the plaintiff's suffering his twine to wander, same verbatim as in second plea]: And the said defendants further say, that afterwards, and before the said time

time when, &c. to wit, at the court leet and view of frankpledge of our sovereign lord the now king, holden pursuant to the said adjournment at the Guildhall in and for the said city, and within the jurisdiction of the same court, on Monday next after the feast of Easter Monday in that year next after the making of the said adjournment before the said John Pears, then being mayor of the said city, and the said Robert Jackson and Robert Nanson, then being bailiffs of the said city, according to the custom there by the oath of twelve free and lawful men resident and inhabiting within the said city, and then being in the same court there charged and sworn to enquire and make presentment of more things which to the said court leet and view of frankpledge belonged, it was then and there presented in the said court, amongst other things, that the said Thomas Yeates had been guilty of a nuisance in suffering the said 1st-mentioned swine to wander about the streets of the same city, the same streets being within the jurisdiction of the said court leet or view of frankpledge, whereupon it was then and there considered in and by the said court, that the said Thomas Yeates should be in mercy; wherefore, &c. [Same as in second plea, from this place verbatim to the end]; which are the same, &c.; whereof, &c.; and this, &c.; wherefore, &c.

J. BURLAND.

And the said Thomas Yeates, as to the first plea of the said defendants by them secondly above pleaded as to the breaking and entering, &c. by them done, says, that by reason, &c. (*procludi non*); because he says, that true it is that the city of Carlisle aforesaid hath been and is an ancient city, and that the citizens of the said city for the time being from time whereof the memory of man is not to the contrary, until the twenty-first of July in the said thirteenth year, &c. were an ancient corporation or body corporate in deed, fact, and name, and had been and were confirmed by divers letters patent of divers late kings and queens of England, at divers times by the said names of incorporation in that behalf mentioned; and that on the said twenty-first of July, in the said thirteenth year, &c. the said citizens were by his said late majesty by his letters patent in the said plea mentioned incorporated by the said name of the mayor, aldermen, bailiffs, and citizens of the city of Carlisle, and that the said citizens for the said city for the time being, during all the said time immemorial until the twenty-first of July in the thirteenth year aforesaid by their several names of incorporation in that plea first and secondly mentioned, and the mayor, aldermen, bailiffs, and citizens of the said city of Carlisle continually from thenceforth hitherto have had and have used, and been accustomed, and of right ought to have had, and the said mayor, aldermen, bailiffs, and citizens of the said city still of right ought to have such court leet or view of frankpledge as in the said plea is mentioned, and such court leet or view of frankpledge was held as in the same plea is mentioned; and that the said Thomas Yeates was answered, and

Replication, admits the city to be an ancient city, &c. &c. &c. *De iuribus sua a quo tali causa.*

such

TRESPASS.—REPLICATION—

such amerciamient affected in manner and form as the said defendants have in that plea above alledged; but the Thomas Yeates further says, that the said defendants, at the same time when, &c. of their own wrong, and without the residue of the cause by them in that plea alledged, broke and entered the said dwelling-house of him the said Thomas Yeates, in the first Count of the said declaration mentioned in which, &c. and remained and continued therein for the said twenty minutes; part of the time in the first Count of the said declaration mentioned, and during that time disturbed and disquieted the said Thomas Yeates in the peaceable and quiet possession of his said dwelling-house, and took and carried away the said goods and chattels of the said Thomas Yeates, in the said first Count of the said declaration mentioned in manner and form as the said Thomas Yeates has above thereof complained against them, and this he prays may be enquired of by the country, &c. [Similiter]: And the said Thomas Yeates, as to the said plea of the said defendants by them thirdly above pleaded as to the breaking and entering, &c. by them done, says, that he by reason, &c. (*precludi non*); because he saith that the said corporation for the time being whereof, &c. until the said twenty-first of July, in the thirteenth year, &c. by their several names first and secondly mentioned, and the mayor, aldermen, bailiffs, and citizens of the said city of Carlisle continually from thenceforth hitherto have had and have used, and been accustomed to have, and of right ought to have had, and the said mayor, aldermen, bailiffs, and citizens of the said city still of right ought to have such court leet and view of frankpledge in the said plea mentioned, and that the same hath used and been accustomed to be adjourned in the manner in the first plea mentioned, and that such court leet and view of frankpledge was held and adjourned as in the same plea mentioned, and that the same was held according to such adjournment, and that at the same court so held by adjournment such presentment of the supposed nuisance in the said plea mentioned was made, and that he the said Thomas Yeates was amerced, and such as the said defendants have in that plea above alledged; but the said Thomas Yeates further saith, that the said defendants at the said time when, &c. of their own wrong, and without the residue of the cause by them in that plea alledged, broke and entered the said dwelling-house of him the said Thomas Yeates, in the first Count of the said declaration mentioned, and remained and continued therein for the said twenty minutes, &c. &c. in manner and form as the said Thomas Yeates hath above thereof complained against them; and this he prays may be enquired of by the country, &c. [Similiter]; therefore, &c.

JAMES WALLACE.

Plaintiff had a verdict for five pounds damages.

Plea,

Plea, 1st, General Issue: And for further plea in this behalf as to the breaking and entering of the said close of the said plaintiff in the first Count of the said declaration mentioned, and with part of the said cattle in the said first Count of the said declaration mentioned, to wit, one sow and one sow pig of the said defendants eating up, depasturing, breaking down, trampling upon, consuming, and spoiling the said grafs and corn of the said plaintiff there growing, and tearing up, turning up, rooting up, subverting and spoiling the soil of the said plaintiff there, and breaking down, pulling down, prostrating, and destroying the gates, hedges, and fences of the said plaintiff there erected, standing, and being at one of the said several times when, &c. in the said first Count of the said declaration mentioned, to wit, on, &c.; and also as to the breaking and entering the close of the said plaintiff in the last Count of the said declaration mentioned, and with part of the said cattle in that Count mentioned, to wit, the said sow and sow pig of the said defendant, eating up, &c. the grafs and corn of the said plaintiff there growing, and tearing up, &c. the soil of the said plaintiff there, and breaking, &c. the gates, &c. of the said plaintiff in that Count mentioned, at one of the said several times when, &c. in that Count mentioned, to wit, on, &c. he the said defendant, by leave of, &c. (*ad hoc non*); because he says that the said close in which, &c. in the first Count of the said declaration mentioned, and the said close in the said second Count of the said declaration mentioned, are one and the same close, and not other or different closes, and that the said several times when, &c. in the said first Count of the said declaration mentioned, and the said several times when, &c. in the last Count of the said declaration mentioned, are the same times, and that the said cattle in the said first Count of the said declaration mentioned, and the said cattle in the said last Count of the said declaration mentioned are the same cattle, and that the said part of the said cattle in the said declaration mentioned, to wit, the said sow and sow pig of the said defendant had a little before the said time, when, &c. without the knowledge and against the will of the said defendant, broke and entered the said close of the said plaintiff in the said declaration mentioned, and in so doing had a little broke down, &c. the gates, &c. of the said plaintiff erected, standing, and being in the said close, and had a little tore up, &c. the soil there, and had done some small damage to the said plaintiff, and were at the said time, when, &c. in the said close of the said plaintiff, in the said declaration mentioned, eating up, &c. the grafs and corn there growing, and doing damage there to the said plaintiff, for which reasons the said plaintiff at that one time when, &c. and before the suing out the original writ in this behalf, seized and took the said cattle, to wit, the said sow and sow pig of the said defendant in the said close of the said plaintiff, in which, &c. as a distress for the aforesaid damage, and drove the same out of the said close in which, &c. to a certain open and common pound, situate and being at, &c. in &c. and there im-

Plea (to a declaration for entering closes, and with cattle depasturing grafs, pulling down hedges, &c.) that the cattle entered the closes against the will of the defendant, and that the plaintiff took and impounded them.

3d. Plea.

pounded the same as a distrefs for the said damage; and the said Joseph further says, that the said first part of the said cattle in the said declaration mentioned, to wit, the said sow and sow pig of the said defendant, at the time of suing out the original writ of the said plaintiff in this behalf, were and still are kept and detained by the said plaintiff so impounded as a distrefs for the damage aforesaid; and this, &c.; wherefore, &c.: And for further plea in this behalf, as to the breaking, &c. [As before, except what relates to the *sow and sow pig*, inserting generally with *cattle*]; the said Joseph says by like leave, &c. (*actio non*); because he says, &c. [Same closes and same times as before]: And the said Joseph further says, that he the said defendant doth not, nor did at the said one time of the said several times in the said declaration mentioned, or before or afterwards claim any title to the said close in which, &c. or to any part thereof, but wholly disclaims all title or claim whatsoever, or to any part thereof; and that the said trespass above in that plea particularly mentioned to have been committed by the said defendant involuntarily and by mere negligence, and that he the said defendant, after the committing of that trespass, and before the suing out the original writ of the said plaintiff in this behalf, to wit, on, &c. at, &c. offered to pay, and tendered to the said plaintiff the sum of five guineas of, &c. as and for amends and satisfaction for that trespass, which said sum of five guineas was then and there sufficient and ample amends and satisfaction for that trespass; but that the said defendant then and there wholly refused to accept and receive the same of and from the said defendant; and this, &c.; wherefore, &c.

NASH GROSE.

Replication to
last plea.

And the said Samuel, as to the said plea of the said defendant whereof he hath put himself upon the country, doth so likewise; and the said plaintiff, as to the said plea of the said defendant by him secondly above pleaded in bar as to the breaking, &c. (*precludi non*); because he says, that true it is, that he the said plaintiff seized and took the said sow and sow pig of the said defendant in the said close of the said plaintiff, in which, &c. as a distrefs for the damage therein mentioned, and drove the same out of the said close, in which, &c. to a certain common and open pound situate and being at, &c. in, &c. and there impounded the same as a distrefs for such damage, and for a small space of time for the cause aforesaid, detained the said sow and sow pig, as the said Joseph hath above in pleading alledged; but the said plaintiff further says, that after such seizing, taking, and detaining in pound of the said sow and sow pig, and before the suing out the original writ of the said plaintiff, to wit, on, &c. at, &c. the said sow and sow pig escaped out of the said pound without the consent and against the will, and without the default of the said plaintiff, the said plaintiff not being then nor yet satisfied or recompensed for the said trespasses in the said plea above mentioned; and this, &c.; wherefore, &c.: And as to the said plea of the said defendant lastly
above

REPLICATION—REJOINDER—EASEMENT.

291

above pleaded in bar as to the breaking, &c. (*precludi non*); because protesting that the said Joseph did not tender and offer to pay to the said plaintiff the said sum of five guineas as amends for the trespasses aforesaid in manner and form as the said defendant has above in his said plea lastly above pleaded in bar alledged; for replication the said plaintiff says, that the said sum of five guineas was not sufficient amends for that trespass, and this he prays may be enquired of by the country, &c.

GILES ROOKE.

And the said Joseph, as to the said plea of the said Samuel by him lastly above pleaded by way of reply to the said plea of the said Joseph by him secondly above pleaded in bar, says notwithstanding any thing by the said Samuel in his said replication alledged (*factis non*); because he says, that the said sow and low pig did not escape out of the said pound in manner and form as the said Samuel hath above in reply alledged, and of this he puts himself upon the country, &c.

Rejoinder;

NASH GROSE.

DECLARATION for chasing lambs.

Plea, damage seafant.

And the said plaintiff, as to the said plea of the said defendants by them above pleaded in bar as to the said chasing and driving with dogs the said lambs of the said plaintiff, in the said first Count of the said declaration mentioned, says (*precludi non*); because he says, that M. L. widow, before the said time when, &c. to wit, on the first of May, 1738, was seised in her demesne as of fee of and in two closes of land, one of them called, &c. with the appurtenances, in the said parish of P. and being so seised thereof she the said M. and all those whose estates she then had of and in the said land, with the appurtenances, from time whereof, &c. for herself and themselves, and his and their respective farmers of the said two closes of land called, &c. and, &c. for the time being, have used, and were accustomed to have and use as often as need required the benefit and easement of washing her and their respective sheep and lambs, levant and couchant in and upon the said two closes of land called, &c. and in a certain brook or rivulet, in the said parish of P. at a certain place in the said brook or rivulet near the said close called C. in the said plea above mentioned, and after the washing thereof as aforesaid of driving into and upon the said close of land called C. to lie down and dry themselves there, and of continuing therein the said close a reasonable time for that purpose as to the said two closes of land, with their appurtenances, called, &c. and, &c. belonging and appertaining: And the said plaintiff further says, that the said M. L. being so seised of the said two closes of land called, &c. and, &c. with the appurtenances, she the said M. L. before the said time when, &c. to wit, on the first of May 1738, at the parish of P. demised her said two closes of land, with the appurtenances,

M. L. seised of two closes.

Prescription for the benefit of washing their sheep in a rivulet near locus, and afterwards of driving the sheep into locus to dry themselves.

M. L. demised to plaintiff as tenant from year to year.

to the said plaintiff, to have and to hold to the said plaintiff from thenceforth for and during one whole year, and so on from year to year as long as the said parties should please; by virtue of which demise he the said plaintiff afterwards and before the said time when, &c. entered into the said two closes of land demised to him, with the appurtenances, and at the said time when, &c. was and still is possessed thereof, and being so possessed, he the said plaintiff, at the said time when, &c. washed his said lambs, in the said declaration mentioned, and then being his own lambs levant and couchant in and upon the said two closes of land demised to him as aforesaid, in the said brook or rivulet near to the said close of land called C. drove the same being so washed into the said close called C. to lie down and dry themselves there, which said lambs being lain and drying themselves there in the said close did snatch and eat a little grais there growing against the will of the said plaintiff, and the said lambs having been put a reasonable time *locus in quo* for the cause aforeaid, the said defendants of their own wrong chased and drove the same with dogs, in manner and form as the said plaintiff, &c.; and this, &c.; wherefore, &c.

T. DAVENPORT.

LUCKENBACK	} DECLARATION for breaking
MAULKIN AND ANOTHER.	
	and entering house, seizing goods,
	and detaining them till two hundred
	pounds was paid.

Plea 1st, General Issue: And for further plea in this behalf as to the breaking and entering the said dwelling-house, work shops, dye-house yards, and other the premises of the said plaintiff, in the said first Count of the said declaration mentioned, and making a noise and disturbance therein, and keeping and continuing in the said dwelling-house, &c. making such noise and disturbance therein, and disturbing and disquieting the said plaintiff in the possession, use, occupation, and enjoyment of the said dwelling-house, &c.; and seizing, taking, and destroying the said goods, chattels, and stock in trade of the said plaintiff there then found and being in that Count also mentioned, and keeping and detaining the same from him for the said space of time in that Count also mentioned, and until the said plaintiff for the obtaining of the said goods, chattels, and stock, was compelled to pay, and did pay the sum of one hundred pounds, part of the said sum of two hundred pounds in that Count mentioned above supposed to have been done by the said defendants, they the said defendants by leave, &c. (*ad id non*); because they say, that before the said time when, &c. to wit, on the fourteenth of August 1777, at the chief office of excise, holden in London, one E. C. gentleman, in his proper person, as well for his said majesty as for himself, exhibited to the commissioners and governors appointed by his said majesty for his receipt of the excise, a complaint and information, and thereby informed them

Plea, that the said plaintiff having been fined by the commissioners of excise, and not paying the same, distrained his goods by defendant as their servant.

them that for three months then last past and longer, and within the limits and jurisdiction of the said office and commissioners, one B. M. and the said plaintiff therein had been, and continued to be, and then were tanners of hides and pieces of hides and skins, and that they the said B. M. and plaintiff being such tanners, they the said B. M. and plaintiff, within three months then last past, that is to say, on the ninth of August then instant, within the limits and jurisdictions aforesaid, with intent to deceive his said majesty of his just dues upon hides and skins and pieces of hides and skins granted by the statutes in that behalf made, did fraudulently neglect, and did not give or leave notice in writing to or for the proper officer of excise appointed for, and where their tan house, work house, or other place was made use of, of four rooms or other places made use of by the said B. M. and plaintiff, one of them for the tanning, tawing, and dressing of hides and skins, and pieces of hides and skins, chargeable with duties to his said majesty, by virtue of the statutes in that case made and provided, but did make use of such rooms or places, one vat therein contained for the tanning, tawing, and dressing such hides and skins, and pieces of hides and skins, without giving or leaving such notice as aforesaid, contrary to the form of the statute in such case made and provided; whereby the said B. M. and plaintiff hath forfeited the sum of fifty pounds for each of the said rooms, and fifty pounds for the said vat, amounting in the whole to the sum of two hundred and fifty pounds of lawful money of Great Britain, and thereupon the said E. C. who as well, &c. humbly prayed the judgments of them the said commissioners in the premises, and that he might have one moiety of the said forfeitures, according to the form of the statute in such case made and provided, and that the said B. M. and plaintiff might be summoned to answer the said premises, and to make a defence thereto before them the said commissioners; and afterwards, to wit, on the seventh of July 1778, at the chief office of excise in London aforesaid, came before three of the said commissioners and governors of excise, as well the said Edward Cook as the said B. M. and plaintiff, they the said B. M. and plaintiff having been first duly summoned to appear there that day before the said commissioners to answer and make defence to the matters in the said information contained, and to come prepared to make defence thereto before them the said commissioners; and the said B. M. and plaintiff having heard the same when then and there were asked by the said commissioners and governors if they could say any thing for themselves why they should not be convicted of the premises charged upon them by the said information in form aforesaid, and thereupon the said B. M. and plaintiff said that they were not guilty of the said offence, or any or either of them; whereupon at the request of the informer, they the said three commissioners and governors did then and there proceed to examine into the facts in the said information contained, and upon due and full proof thereof by witnesses then

produced being creditable witnesses upon their respective corporal oaths by them there duly administered, did manifestly appear to them the three commissioners that said B. M. and plaintiff were tanners of hides and skins and pieces of hides and skins as in the said information was alledged, and that the said B. M. and plaintiff were guilty of using one room and one vat therein for tanning, tawing, and dressing of hides and skins and pieces of hides and skins without giving and leaving notice in writing to or for the proper officer of excise appointed for, and where the said room and vat made use of in manner and form as in the said information was charged; it was therefore afterwards, on the sixth of August 1778, adjudged and determined by the said three commissioners, that the said B. M. and plaintiff had forfeited the sum of fifty pounds for the said room, and fifty pounds for the said vat, amounting in the whole to one hundred pounds of lawful money of Great Britain; it was also further considered by the said commissioners, that the said B. M. and plaintiff were then and there by and before the said commissioners convicted of the said offence of which they were found guilty charged upon them by the said information, and the said commissioners did adjudge and order that the said B. M. and plaintiff should pay the sum of one hundred pounds, to be distributed as the law directs, as by the said judgment and conviction remaining before the said commissioners in the said chief office of excise in London aforesaid more fully appears: And the said defendants further say, that before the said time when, &c. to wit, on the thirteenth of August, in the eighteenth year of his said majesty's reign, and in the year of our Lord 1778, at W. aforesaid, the said sum of one hundred pounds remaining unpaid, there issued from the chief office of excise in London, under the hands and seals of D. P. A. L. and W. L. being three commissioners or governors aforesaid, appointed by his present majesty king George the Third for the management of his receipt of the excise, a certain precept or warrant upon the said conviction, directed to the said Robert Maulkin, messenger, and to all and every other the said commissioners messengers belonging to that office, by which said warrant, reciting, whereas a judgment of them the said commissioners passed in that office on the sixth of August instant, within the limits and jurisdiction of the said office, the said B. M. and plaintiff stood condemned in the forfeiture of one hundred pounds of lawful money of Great Britain, for that the said B. M. and plaintiff, on the seventh of August 1777, did make use of, and caused to be made use of one room and one vat for the tanning, tawing, and dressing of hides and skins and pieces of hides and skins without giving notice in writing thereof, contrary to the form of the statute in such case made and provided, as by the said judgment appeared; therefore the said commissioners did in his majesty's name, by the said warrant, authorize and require the said Robert Maulkin forthwith to seize and detain the goods and chattels of the said B. M. and plaintiff to the value of
the

the sum of one hundred pounds of lawful money of Great Britain, and to cause an inventory and appraisement thereof forthwith to be made, and if the said goods and chattels should not be redeemed within fourteen days next after such service made, then to make sale thereof, rendering to the said B. M. and plaintiff the overplus, if any should be, and for want of sufficient distress, or in case of opposition or resistance, to make return thereof to them the said commissioners, that such further proceedings might be had as by the laws in that case made were directed and appointed, and all the constables and others his majesty's officers were by them respectively prayed and required to be aiding and assisting to him the said Robert Maulkin and to all and every other the said commissioners messengers belonging to the said office in the due execution of the said warrant: And the said defendants aver, that the said plaintiff in the said declaration mentioned, and the said John Martin Luhkenback in the said information and warrant mentioned. are one and the same person, and not other and different persons, to wit, at W. aforesaid, which said warrant afterwards, and before the said time when, &c. to wit, on the thirteenth of August 1778 aforesaid, at Westminster aforesaid, was delivered to the said Robert Maulkin, he the said Robert Maulkin then, and until and at and after the said time when, &c. being messengers of the said commissioners belonging to the said office, to be executed in due form of law; by virtue and in execution of which said warrant the said Robert Maulkin, so being such messenger as aforesaid in his own right, and the said R. A. as his servant, and by his command, and at the said time when, &c. entered into the said dwelling-house, &c. in the said first Count of the said declaration mentioned in order to seize and distrain the goods and chattels of the said plaintiff in the said first Count of the said declaration mentioned in order to raise and levy the said sum of one hundred pounds of, &c. and did then and there detain the said goods and chattels for the said space of time in the said first Count of the said declaration mentioned, and until the said plaintiff paid to the said Robert Maulkin the sum of one hundred pounds, as by the said warrant he the said Robert Maulkin was commanded, and in so doing they the said defendants did necessarily and unavoidably make a little noise and disturbance in the said dwelling-house, &c. making and continuing such little noise and disturbance therein, and for the said time in the said first Count mentioned did necessarily and unavoidably disturb and disquiet the said plaintiff in the peaceable and quiet possession, use, occupation, and enjoyment of the said dwelling-house, &c. doing as little damage as they possibly could on that occasion, which are the same, &c. whereof, &c.; and this, &c; wherefore, &c.

NASH GROSE.

JONES } DECLARATION for distraining, taking,
against } and seizing cattle.
 BROTHERTON.

Plea.

City of Gloucester is an ancient city.

Burgesses of the town body corporate and politic.

At the west end of the town is a bridge and causeways.

A king's common highway over bridge and causeway.

Body corporate ought to repair the bridge ;

for which they ought to take toll ;

for which they may distrain.

That plaintiff was driving cattle over the bridge, and ought to have paid toll.

Plea, 1st, Not Guilty: And for further plea as to the seizing, taking, and distraining the said cattle in the said declaration mentioned by him the said John Brotherton above supposed to have been done by the said John, by leave, &c. (*adlio non*) ; because he says, that the city of Gloucester is, and from time whereof the memory of man is not to the contrary, hath been an ancient town and city, and that the burgesses of the said town and city now are, and from time whereof, &c. have been a body politic and corporate in deed, fact, and name, and have at divers times been called and known by various names, that is to say, by the names of the burgesses of G, and also by the name of the mayor and burgesses of the city of Gloucester and county of the city of G. : And the said John further says, that at the west end of the said town or city there now is, and also from time whereof, &c. hath been an ancient bridge over the river Severn, and there now are, and from time whereof, &c. have been divers ancient causeways leading into, through, and out of the said city or town, in, through, and over which said bridge and causeways there is, and from time whereof, &c. hath been the king's common highway leading from Hereford to London for all liege subjects of this realm to go, pass, and repass with his and their cattle, carts, and carriages, every year and at all times of the year at his and their free will and pleasure : And the said John further says, that the said body corporate, from time whereof, &c. have repaired and amended, and have been used and accustomed to repair and amend, and still of right ought to repair and amend the said bridge and causeways when and as often as occasion hath required, and in consideration thereof the said body corporate, for and during all the time aforesaid, have had and taken, and have been used and accustomed to have and take, and still of right ought to have and take a certain reasonable toll or duty for all horned cattle, to wit, the sum of one farthing for every horned beast driven, going, and passing over the said bridge and causeway in their way through the said town and city (except the cattle of the burgesses of the said town and city, and other persons legally exempt from the payment of the said toll or duty), and when and as often as the said toll or duty has upon request been refused to be paid, the said body corporate, for and during all the time aforesaid, from time whereof, &c. have distrained, and have been used and accustomed to distrain, and still of right ought to distrain such cattle for which such toll or duty has been refused to be paid : And the said John further says, that the said David, at the said several times when, &c. in the said declaration mentioned (the said David not then being a burgess of the said town or city, or a person exempt from the payment of the said toll or duty), was driving the said horned cattle

cattle mentioned in the said declaration along and upon the said bridge or causeway in their way through the said town or city, whereupon the said John, as bailiff of the said body corporate, by their command, at the said several times when, &c. demanded of the said David the said toll or duty, to wit, the sum of one farthing for each of the said horned cattle so going along the said bridge for the use of the said body corporate, which said toll or duty the said David then and there refused to pay to the said John as bailiff of the said body corporate, and by their command seized, took, and distrained the said cattle in the said declaration mentioned for and in the name of a distress for the said toll or duty for the said horned cattle respectively, as it was lawful for him to do for the cause aforesaid, which are the same, &c. whereof, &c.; and this, &c.; wherefore, &c.

F. BULLER.

BUTLER AND OTHERS }
at the suit of }
MASON.

AND the said defendants, by A. B. } their attorney, come and defend the } force and injury, when, &c. and say, }
that they are not guilty of the trespass in manner and form as the }
said plaintiff hath above complained against them; and of this }
they put themselves upon the country, &c.: And for further plea }
as to the breaking and entering the house in the first Count of the }
said declaration mentioned, and as to the breaking and entering }
the house in the second Count of the said declaration mentioned, }
and him the said William in the quiet use and occupation of the }
said house disturbing and hindering him, and a noise and disturb- }
ance therein making for the time in the second Count mentioned, }
and as to the breaking and entering the house in the last Count of }
the said declaration mentioned, and taking the goods and chattels }
in the last Count of the said declaration mentioned in the said }
house being, above supposed to have been committed by the said }
defendants, they by leave of, &c. say (*actio non*); because they }
say, that the said house in the first Count of the said declaration }
mentioned and the said house in the second Count of the said de- }
claration mentioned, and the said house in the last Count of the }
said declaration mentioned, before the first time when, &c. and at }
the said several times when, &c. were one and the same house, and }
not divers or different, and that the breaking and entering of the }
said house in the first, second, and last Counts of the said decla- }
ration mentioned was one and the same breaking and entering, and }
not divers or different, and that the said W. L. long before the }
time when, &c. held and enjoyed a certain messuage or dwelling- }
house, with the appurtenances, situate and being in, &c. as te- }
nant thereof to him the said Jonas, under a demise thereof to him }
theretofore made, at the yearly rent of pounds, payable to the }
said Jonas quarterly, to wit, at the feasts of, &c. by even and }
equal portions, and held and enjoyed the same under the said de- }
mise as tenant thereof to the said Jonas under the said demise, }
form

Plea of justifi-
cation, entering
plaintiff's dwell-
ing house and
taking goods,
distress for rent
within thirty
days after they
had been frau-
dulently re-
moved.

from the feast-day of, &c. until and upon the feast of, &c. in the same year, and from thence until and upon the day of, &c. and in the said eighteenth year of the reign of, &c.; and because pounds of the said rent, for one quarter of a year ended on the feast of, &c. and in the eighteenth year aforesaid, on that day in that year, and also at the said time when, &c. were in arrear and unpaid to the said Jonas; and because the said W. L. within the space of thirty days next before the said time when, &c. to wit, on, &c. had fraudulently conveyed away off and from the said demised premises the said goods and chattels in the last Count of the said declaration mentioned to prevent the said Jonas from distraining the same for the said rent so payable, due, in arrear, and unpaid as aforesaid; and because the said goods and chattels so fraudulently conveyed away off and from the said demised premises for the purpose aforesaid, at the said time when, &c. were in the said house in which, &c. the said Jonas in his own right, and the said A. and F. as his servants, and by his command, at the said time when, &c. entered into the said house in which, &c. to take and seize the said goods and chattels as a distress for the said rent so due and in arrear as aforesaid, and did then and there seize and take the same as such distress, and then and there, in the said house in which, &c. kept and continued in the possession of the said goods and chattels so distrained, as they lawfully might for the cause aforesaid, for a certain space of time, to wit, for the space of time in the said second Count of the said declaration mentioned, and until the said W. L. with force and arms, expelled the said Jonas A. and G. from and out of the said house, and from and out of the possession of the said goods and chattels so distrained for the cause aforesaid, and the said J. A. F. in so doing as aforesaid necessarily and unavoidably a little disturbed and disquieted the said William in the quiet use and occupation in which, &c. and necessarily and unavoidably made a little noise and disturbance for the time in the said second Count in that behalf mentioned, doing as little damage there to the said William as they could on that occasion, to wit, at, &c. in, &c. which are the same breaking and entering the said house in the first, &c. and as to the breaking, &c. in the second Count, &c. him the said William in the quiet, &c. of the said house, disturbing and hindering, and a noise, &c. there making for the time in the second, &c. and as to the breaking, &c. in the last, &c. and taking the goods, &c. whereof the said William hath above complained against them; and this, &c.; wherefore, &c. if, &c.: And for further plea as to &c. &c. [Add two more pleas same as the first.]

J. MORGAN.

LICENCE

LICENCE IN LAW.

PAVIOUR
against

HEWIT, CLERK, AND OTHERS.

} PLEA, 1st, General Issue: And for further plea in this behalf as to the breaking and entering the said close in the said declaration mentioned, and with feet in walking treacing down, &c. the grafs there growing and being, and with the said horses, mares, and geldings, part of the said cattle in said declaration mentioned, eating up, &c. other the grafs there growing and being, and with the wheels of a certain waggon tearing up, turning up, subverting, and spoiling the soil of the said Hannah in her said close, and pulling up, &c. the said gates, posts, rails, hedges, ditches, and fences there erected, standing, and being, and breaking off, &c. the said iron locks, iron staples, and iron chains affixed to the said gates, and wherewith the same gates were locked and fastened, and seizing and taking off one waggon load of hay, part of the said hay in the said first Count of the said declaration mentioned, lying and being in the said close, and carrying the same away, and converting and disposing thereof to their own use, by them above supposed to have been committed at the said first time when, &c. and also as to the seizing, &c. of one waggon load of hay, part of the said goods and chattels in the said last Count of the said declaration mentioned, and converting and disposing thereof to their own use, above supposed to have been done by them the said defendants at the said first time when, &c. they the said defendants (*actio non*), because they say, that the said waggon load of hay, part of the said hay in the said first Count of the said declaration mentioned, and the said waggon load of hay, part of the said goods and chattels in the said last Count of the said declaration mentioned are, and at the said first time when, &c. were one and the same, and not other or different, and were then in the said close in which, &c.; and that the said Thomas, at the said first time when, &c. and long before was, and continually from thenceforth hitherto hath been, and still is vicar of the vicarage of the parish church of Westbury, in the said county of Wilts, and that divers, to wit, three pieces or parcels of meadow land called the Chantry Lazars, containing in themselves by estimation thirty-six acres, whereof the said close in which, &c. is parcel, now are, and at the said first time when, &c. and from time whereof the memory of man is not to the contrary have been ancient meadow land, and situate, lying, and being within the said parish of Westbury, and within the bounds, limits, and titheable places of that parish, which said pieces or parcels of meadow land whereof, &c. now are, and at the said several times when, &c. and long before were in the possession and occupation of the said Hannah, and that the said Hannah, and all other the tenants and occupiers of the said pieces or parcels of land whereof, &c. for the time being, from time whereof, &c. yearly and every year, when the grafs growing

Plea to trespass forentering close with a waggon and carrying away hay, by one defendant as vicar and the others as his servants, justifying entering locus with a waggon drawn by six horses to take away the tithes of hay under a custom to take such waggon load in lieu of tithes of hay of locus, in consideration of plaintiff's making the same into hay according to the custom of the country.

(a) (By the vicar)

and arising upon and from the said pieces or parcels of land whereof, &c. has been mown and cut down at the first month thereof in each year, have made, and have been used and accustomed to make, and during all that time of right ought to have made, and the said Hannah, being occupier as aforesaid, still of right ought to make the same into hay at her and their own proper costs and charges, and that the said Thomas, and all his predecessors vicars of the said vicarage from time whereof, &c. yearly and every year, when the grass growing and arising upon and from the said pieces or parcels of meadow land whereof, &c. or any part thereof, at the said first month thereof, has been so mown and cut down and made into hay as aforesaid, and hath been fit to be taken and carried away, and have had taken and carried away, and have been used and accustomed to take and carry away, and during all the time aforesaid of right ought to have had, taken, and carried away, and the said Thomas, as vicar as aforesaid, still of right ought to have taken and carried away from thence to his and their own use, in right of the said vicarage, a certain quantity, to wit, one complete waggon load of the same hay, *drawn by six horses, and made according to the custom of the said parish*, in lieu of all the tithes growing and arising upon and from the said pieces or parcels of land whereof, &c. And the defendants further say, that the grass growing and arising upon part of the said pieces or parcels of land a little before the said time when, &c. was mown and cut down and made into hay as aforesaid, and was fit to be taken and carried away, the same being the first month thereof in that year, and part thereof, at the said first time when, &c. was lying and being in and upon the said close in which, &c. wherefore the said Thomas, so being vicar as aforesaid, in his own right, and the said (other) defendants as his servants, and by his command, at the said first time when, &c. went with the said waggon drawn by the said horses, mares, and geldings, *being six in number, and no more*, into the said close in which, &c. in and by the usual way into the same, in order to take and carry away the said waggon load of hay so being in the said close in which, &c. and to which he the said Thomas was so entitled as aforesaid, and with the said waggon drawn by the said six horses, mares, and geldings, took and carried away the same waggon load of hay, *drawn by six horses, and made according to the custom of the said parish*, from and out of the said close in which, &c. in the usual way there, as it was lawful for him to do for the cause aforesaid and in so doing the said defendants, at the said first time when, &c. necessarily and unavoidably, with their feet in walking, and with the said horses, mares, and geldings, did tread down, &c. a little of the grass there then growing and being, and with the wheels of the said waggon tore up, &c. a little of the soil in the same close in which, &c. and the said horses, mares, and geldings, in drawing and passing with the said waggon, did, against the will of the said defendants, snatch up, eat up, and depaillure a little of the grass there then growing and being,

being, and because the usual way into the said close in which, &c. was stopped by the said gates, posts, rails, hedges, dikes, and fences there erected, standing, and being in and across the same, and because the said gates were then and there locked and fastened with the said iron locks, iron staples, and iron chains affixed to the same, so that they the said defendants could not otherwise open a necessary passage through the same gates, he the said Thomas in his own right, and the said (other) defendants as his servants, and by his command, in order to open a necessary passage to use the said way there with the said waggon drawn by the said horses, mares, and geldings, on the occasion aforesaid, did necessarily break down, &c. the said gates, &c. so there erected, standing, and being, and broke off, broke to pieces, spoiled, and destroyed the said iron locks, iron staples, and iron chains so then and there affixed to the said gates, and wherewith the same were then and there locked and fastened, doing as little damage on that occasion as they possibly could, which are, &c. whereof, &c.; and this, &c.; wherefore, &c. [Third plea same as second, only varying the custom, by omitting what is in it, and inserting a waggon load containing two ton and a half]: And for further plea in this behalf as to the breaking and entering, &c. [as before] the said defendants, by leave, &c. (*ad interim*), because they say, that [say same in each Count], and that the said Thomas [was vicar as before], and that divers, to wit, three pieces or parcels of meadow land called the Chantry Leazes, containing in themselves by estimation thirty-six acres, whereof the said close is one parcel, now are, and at the said time when, &c. were, and from time whereof, &c. have been ancient meadow glebe land belonging and appertaining to the rectory of the said parish, and situate, lying, and being within the said parish church of Westbury, which same pieces or parcels of land whereof, &c. now are, and at the said first time when, &c. and long before were in the possession and occupation of the said Hannah, and that the said Hannah, and all others the tenants and occupiers, &c. [stating as before, that she ought to make the grass into hay, *at her own proper costs and charges*]; and that the said Thomas, and all his predecessors vicars of the said vicarage, from time whereof, &c. yearly and every year, when the said grass growing and arising upon and from the said last-mentioned pieces or parcels of meadow land whereof, &c. or any part thereof, at the said first month thereof, has been so mown and cut down and made into hay as aforesaid, and hath been fit to be taken and carried away, have had, taken, and carried away, and have used and been accustomed to have, take, and carry away, and during all the time aforesaid of right ought to have had, taken, and carried away, and the said Thomas, as vicar as aforesaid, still of right ought to have, take, and carry away from thence to his and their own use, in right of the said vicarage, a certain quantity, to wit, one complete waggon load of the same hay drawn by six horses, and made according to the custom of the said parish, as belonging and appertaining to the said vicarage, &c. [From hence to the end same

and during and unto the full end and term of fifty years, if the said A. F. and Jane his wife, or either of them, should so long live; whereby the said Adam became entitled to the said tithes of the said close, and being so entitled he the said Adam afterwards, and before any of the said times when, &c. to wit, on the same day and year last aforesaid, at Stone aforesaid, in the county aforesaid, duly made his last will and testament in writing, and thereby appointed the said Jane executrix thereof, and afterwards, to wit, on the same day and year aforesaid, died so entitled to the said tithes, and the said Jane him survived, and still is alive, to wit, at Stone aforesaid, by virtue whereof the said Jane became and was, and from thenceforth hitherto hath been, and still is lawfully and justly entitled to the said tithes of the said close in which, &c. for the remainder of the said term in the said indenture mentioned: And the said defendants further say, that there now is, and from time whereof, &c. there hath been a certain ancient and laudable custom in the said lordship of Bufford used and approved of, that is to say, that the occupiers of the said several lands therein have been used and accustomed to bind up the corn in sheaves to manage the harvest, and in consideration thereof the eleventh part of such corn hath been taken for the tithes thereof instead and in lieu of a tenth part of the same, and that divers quantities of oats growing and arising upon and from the said close in which, &c. a little before the said time when, &c. were reaped and cut down, and the eleventh part thereof was severed from the ten parts thereof, residue thereof, and duly set out as and for the tithes of the said oats, to and for the use of the said Jane as grantee of the said tithes in manner aforesaid, according to the said custom and manner of tithing, and remained and continued so severed and set out as aforesaid and in the straw until and at the said several times when, &c. whereupon the said defendants, as servants of the said J. so being grantee of the said tithes as aforesaid, and by her command, at the said several times when, &c. with the said carts, waggons, and other carriages, then and there drawn by the said horses, mares, and geldings, in the said declaration mentioned, by, through, and along the most usual ways and entrances, entered into the said close in which, &c. for the purpose of taking, fetching, and carrying away the said tithes of the said oats in the straw so there severed and set out as aforesaid, and then and there did take, fetch, and carry away the said tithes of the said oats in the straw so severed and set out as aforesaid as and for the tithes of the said oats so arising and in that year growing on the said close in which, &c. in the said waggons, carts, and other carriages, drawn by the said horses, mares, and geldings, as it was lawful for him to do for the cause aforesaid, and in so doing they the said defendants, at the said several times when, &c. necessarily and unavoidably, with their feet in walking, trod down, trampled upon, and consumed a little of the grass and corn of the said Samuel there then growing, and with the feet of the said horses, mares, and geldings, and with the wheels of the said carts, waggons, and other carriages,

(a) (Executrix of grantee of—)

trod down, crushed, consumed, and spoiled a little of the said other grafs and corn of the said Samuel then and there growing, doing as little damage on that occasion as they possibly could, which are the same, &c. ; and this, &c. ; wherefore, &c.

H. LEYCESTER.

Replication,
protesting, &c.
travesties cus-
tom.

And the said plaintiff, as to the said plea of the said defendants by them lastly above pleaded in bar as to all the trespasses in the introduction to that plea mentioned, by them the said defendants above acknowledged to have been committed, says, that (*precludi non*) ; because protesting that the said Henry Allen did not demise, grant, and to farm let unto the said Adam, amongst other tenements and tithes, the tithes of corn of and from the said close in which, &c. yearly increasing, arising, and growing (*modo et forma*) ; protesting also, that he the said Adam did not become entitled to the said tithes of and in the said close in which, &c. and did not die so entitled, nor did the said Jane become so entitled as therein mentioned (*modo et forma*) ; and for replication nevertheless the said plaintiff says, that the said defendants, at the said time when, &c. of their own wrong broke and entered the said close of the said plaintiff in the said declaration mentioned, in which, &c. and with their feet in walking trod down, &c. the said grafs and corn therein mentioned, and with the feet of the said cattle, and with the wheels of the said carts, waggons, and other carriages trod down, &c. other the grafs and corn of the said plaintiff there then growing, in manner and form as the said plaintiff hath in his said declaration above alledged ; without this, that the eleventh part of the said oats was severed from the tenth part residue thereof, and duly set out as and for the tithe of the said oats to and for the use of the said Jane, as grantee of the said tithe in manner aforesaid, according to the custom and manner of tithing as the said defendants have above in their said plea by them lastly above pleaded alledged, &c. ; and this, &c. ; wherefore, &c.

Drawn by MR. J. GRAHAM.

Declaration in
trespass for driv-
ing and chasing
sheep.

RAYNER } CAMBRIDGESHIRE, to wit. John Rayner
against } complains of William Pearce being, &c. ; for that said
PEARCE. } defendant, on the second of April 1788, at the parish
of Barrington, in the said county, drove ten sheep of plaintiffs,
and with dogs worried them, &c. &c.

Plea, justifying
the driving of
plaintiff's sheep,
because they
were wrongfully
intermixed
with the defend-
ant's sheep.

Plea 1st, General issue : And for further plea as to the chasing and driving away the said cattle of the said John in the said declaration mentioned, above supposed to have been done by the said William, by leave, &c. (*actio non*) ; because he says, that he the said William, before any of the said times when, &c. and also at the said several times when, &c. was lawfully possessed of and in divers, to wit, three hundred sheep feeding and depasturing in the said parish of Barrington, in the said county ; and because the said

said sheep of the said John in the said declaration mentioned at the said several times when, &c. were wrongfully and injuriously intermixed with and going amongst the said sheep of the said William, he the said William, in order to separate the said sheep of the said John from the said sheep of the said William, and to keep them apart and distinct, did gently drive the said sheep of the said John from among the said sheep of the said William, and in so doing did drive and chase the said sheep of the said John from amongst the said sheep of the said William, doing no more than was necessary for the purpose of keeping the said sheep of the said John separate from the said sheep of the said William, and from being intermixed therewith, as it was lawful for him to do for the cause aforesaid, which are the same, &c. whereof, &c. ; and this, &c. ; wherefore, &c.

S. LE BLANC.

And the said John, as to the said plea of the said William by him lastly above pleaded in bar as to the chasing, &c. (*precludi non*) ; because he says, that from time whereof the memory of man is not to the contrary until and at the said time when, &c. there were and still are divers, to wit, three manors called or known by the several names of Barrington, Chateris, and Hafferton, within the parish of Barrington aforesaid, and co-extensive therewith, to wit, at the parish of B. aforesaid, in the said county : And the said John further says, that within the said manor and parish there now is, and from time whereof the memory of man is not to the contrary there hath been a certain large open field containing divers, to wit, three hundred acres of land lying within the said manors and parish, and containing the lands of divers and different persons, and the said lands have time immemorially lain dispersed in the said open field, and not divided or separated from each other : And the said John further says, that by the course and method of tillage used within the said manors and parish, from time whereof the memory of man is not to the contrary, the said open field has during all the time aforesaid been, and at the said time when, &c. was, and of right ought to have been, an 1 still of right ought to be divided into three shifts, and tilled in such manner as that one of the said shifts should yearly and every year lie fallow : And the said John further says, that within the said several manors there now are, and from time when, &c. there have been as well divers customary tenements, parcel of the said last-mentioned manors granted and grantable by the lord or lords of the said manors, according to the custom of the said manors by copy of the court-rolls of the said manors, as also divers freehold tenements within the said manors ; and that the several tenements respectively of divers of the said several freehold tenements for themselves and their families, occupiers of the same, and also the tenants of divers of the said customary tenements for the time being for themselves and their families, occupiers of the same for all the time aforesaid, have had, and have used and been accustomed to have and use, and of

Replication, and right of common, vide Index for plea of justification by right of common.

TRESPASS.—REPLICATION.

right ought to have had and used, and still of right ought to have and use common of pasture in the said shifts in the said open field which hath so lain fallow as aforesaid, his and their own lands excepted, every year at all times of the year for a certain number of sheep levant and couchant upon their respective tenements: And the said John further says, that from time whereof the memory of man is not to the contrary there hath been, and at the said several times when, &c. there was and still is within the said manors and parish a certain other ancient and laudable custom there used and approved of, that is to say, that the commonable sheep of the several and respective tenants and occupiers of the said freehold and customary tenements so entitled to such common of pasture as aforesaid have from time whereof, &c. been used and accustomed to feed and depasture, and use the said common of pasture, and for all the time aforesaid of right ought to have fed and depastured, and to have used the said common of pasture, and still of right ought to feed and depasture and use the said common of pasture in the said shift which has so lain fallow as aforesaid altogether in a certain flock called or known by the name of the Great Flock, and that the said flock called the Great Flock hath for and during all the time aforesaid used and accustomed to be folded, and of right ought to have been folded, and still of right ought to be folded for and during a certain determined number of nights in each and every year in a certain order and rotation in and upon the lands of the freehold and customary tenements lying in the said shift which have so lain fallow as aforesaid, for the better manuring, melioration, and improvement thereof respectively: And the said John further says, that the master, fellows, and scholars of Trinity College, in the university of Cambridge, long before the said first time when, &c. to wit, on the first of April 1788, were and still are seised in their demesne as of fee in right of the said college of and in a certain messuage and divers, to wit, one hundred and twenty acres of land, with the appurtenances, lying and being in the said open field within the said parish and manors, and that the said master, fellows, and scholars, and all those whose estate they now have, and at the said time when, &c. had of and in the said messuage and one hundred and twenty acres of land, with the appurtenances, from time whereof, &c. have had, and have been used and accustomed to have, and of right ought to have had, and still of right ought to have for themselves, their farmers and tenants, occupiers of the said messuage and land, with the appurtenances, for the time being, in, through, and over the said shift of the said open field, when the same has lain fallow as aforesaid, their own land therein excepted, common of pasture for divers, to wit, ten sheep levant and couchant on the said messuage and one hundred and twenty acres of land, with the appurtenances, every year at all times of the year; and the said master, fellows, and scholars being so seised as aforesaid, afterwards and long before the said times when, &c. to wit, on the same day and year last aforesaid, at the parish aforesaid

said in the said county, demised to the said John the said messuage and land, with the appurtenances, to have and to hold the same to the said John from the said first of April for and during and unto the full end and term of one whole year from thence next ensuing, and fully to be complete and ended; by virtue of which said demise the said John afterwards, and long before the said first time when, &c. to wit, on the same day and year last aforesaid, entered into and upon the said demised premises, with the appurtenances, and became and was possessed thereof, and by virtue thereof, and of the said custom, he the said John became, and at the said several times when, &c. was entitled to have and use the right and privilege of feeding and depasturing his the said John's sheep, together with the sheep of the said other tenants and occupiers of the said freehold and customary tenements so having common of pasture as aforesaid in the said flock called the Great Flock as aforesaid, in order that the same might be folded together on the aforesaid lands so as aforesaid demised to him the said John, and on the respective lands of the said freehold and customary tenants lying in the said shift of the said common field, which has so lain fallow as aforesaid, in order and rotation according to the custom aforesaid: And the said John further says, that he the said John being so possessed and entitled as aforesaid, did before any of the said several times when, &c. put the said sheep in the said declaration mentioned, the same being his commonable sheep levant and couchant upon the said messuage and one hundred and twenty acres of land, into the said shift in the said open field which in the year of Our Lord 1788, being at the said time when, &c. lay fallow to feed and depasture there, and to use his the said John's common of pasture there together with the sheep of the other tenants of the said freehold and customary tenements, and their farmers, occupiers of the same respectively so accustomed to feed and depasture together in the said great flock as aforesaid, in order that the same might be folded together on the said respective lands of the said freehold and customary tenants of the said freehold and customary tenements lying in the said shift of the said open field which has so lain fallow as aforesaid in order and rotation according to the custom aforesaid: And the said John further says, that the said William, as occupier of a certain tenement within the said parish at the said several times when, &c. was and still is entitled in respect thereof, and by virtue of the said custom, to have and use common of pasture in and throughout the said shift of the said open field, his own land therein only excepted, which has so lain fallow as aforesaid for divers sheep, and to have and to use the right and privilege of feeding and depasturing his the said William's sheep, together with the sheep of the other tenants, farmers and occupiers of the said freehold and customary tenements having common of pasture as aforesaid in the said flock called the Great Flock as aforesaid, and to have the same folded together on the lands of him the said William lying in the said shift of the said common field which has so lain fallow as aforesaid,

TRESPASS.—REJOINDER.—

in order and rotation, according to the custom, and that the said sheep of the said John in the said declaration mentioned at the said several times when, &c. were there in the said shift of the said open field which then lay fallow for the purpose of feeding, depasturing, and using the said John's common of pasture there, together with the sheep of the said William in the said plea mentioned, and the sheep of the other freehold and customary tenants of the said freehold and customary tenements within the said manors and parish, until the said William, at the said several times when, &c. of his own wrong chased and drove away the said sheep of the said John in the said declaration mentioned (*modo et forma*) &c. ; and this, &c. ; wherefore, &c.

S. LAWRENCE.

Trinity Term, 29. Geo. III.

Rejoinder, protesting no such common or custom, *de injuria*, &c.

And the said William, as to the said plea of the said John by him above pleaded by way of reply to the said plea of the said William by him lastly above pleaded in bar as to the chasing, &c. (*adlio non*) ; because protesting that from time whereof, &c. there were not nor still are divers, to wit, three manors called and known by the several names of B. C. and H. within the parish of B. aforesaid, and extending throughout the same and co-extensive therewith, as in the said replication is above alledged ; protesting also, that by the course and method of the tillage used within the said manors and parish, from time whereof, &c. the said open field in the said replication mentioned has not during all the time aforesaid been, and at the said time when, &c. was not, and of right ought not to have been, and still of right ought not to be divided into three shifts, and tilled in such manner as that one of the said shifts should yearly and every year lie fallow as in the said replication is alledged ; protesting also, that the said master, fellows, and scholars of Trinity College were not nor are still seised in their demesne as of fee in right of the said college of C. in the said messuage and lands in the said replication mentioned, with the appurtenances, lying and being in the said open field within the said manors and parish, and that the said master, fellows, and scholars, and all those whose estate they now have, and at the said time when, &c. had of and in the said messuage and lands, with the appurtenances, from time whereof, &c. have not had and have not been used and accustomed to have, and of right ought not to have had, and still of right ought not to have for themselves, their farmers and tenants, occupiers of the said messuage and land, with the appurtenances, for the time being, in, through, and over the said shift of the said open field, when the same has lain fallow as aforesaid, their own lands therein only excepted, such common of pasture as in the said replication in that behalf is alledged ; for rejoinder nevertheless in this behalf the said William says, that the said sheep of the said John in the said declaration mentioned, at the said several times when, &c. were wrongfully and injuriously intermixed with and going amongst the said sheep of the said William as in the said plea of the said William by him lastly above pleaded in bar alledged ; without this, that from

from time whereof, &c. [Traverse of the custom of the sheep's feeding and selling together, &c.] in manner and form as in and by the said replication of the said John is in that behalf above alleged; and of this he puts himself upon the country, &c.

S. LE BLANC.

I have concluded this rejoinder to the country instead of a verification, to save time, as both parties wish to go to trial; if the other side disapprove it, it must stand as at first drawn, with a verifica-

tion, and the plaintiff must surjoin.

S. LE BLANC.

This cause came on to be tried before Gould 1789, but was referred.

LICENCE IN LAW AND FACT.

AND the said Edward, &c. General Issue: And for further plea in this behalf as to the breaking and entering the said close called the Yard, in which, &c. in the said first Count of the said declaration mentioned, and seizing, taking, and carrying away the said quantities of water found and being in the said trough, cistern, or reservoir in the said first Count of the said declaration mentioned, and breaking open, wrenching open, forcing open, breaking to pieces, and spoiling the said trough, cistern, or reservoir, and breaking to pieces the said locks, lock boxes, hasps, and staples in the said first Count of the said declaration mentioned, and by which the said trough, cistern, or reservoir was locked, shut, and fastened in the said first Count of the said declaration mentioned; and also as to breaking and entering the said close called the Yard, in which, &c. in the said second Count of the said declaration mentioned, and interrupting and disturbing the said plaintiffs in the peaceable and quiet use, occupation, and enjoyment of the said last-mentioned close and as to and with hammers, axes, hatchets, and other instruments, breaking open, wrenching open, forcing open, breaking to pieces, damaging, and spoiling the said trough, cistern, or reservoir in the said third Count of the said declaration mentioned, and the cover thereto belonging, and the locks, lock boxes, staples, and hasps with and by which the same was locked, shut, and fastened; and also as to the seizing and taking the said quantities of water in the said last Count of the said declaration mentioned, and converting and disposing thereof to his own use by the said Edward above supposed to have been done, he the said Edward, by leave, &c. (*adlin non*); because he says, that as well the said yard and the said trough, cistern, or reservoir in the said first Count of the said declaration mentioned, as the said yard in the said second Count of the said declaration mentioned, and the trough, cistern, or reservoir in the said third Count of the said declaration are, and at the said several times when, &c. were one and the same yard and trough, cistern, or reservoir, and not other or different, to wit, at Leeds aforesaid, in the said country, and that the said quantities of water in the first and last Counts

Plea (to declaration for entering a yard, taking water, and breaking open a reservoir): that plaintiff and defendant were possessed of an adjoining yard to their houses in common, in which was a reservoir for containing water for their joint use, and defendant broke the cover of it for water, as he lawfully might.

of the said declaration mentioned are the same and not other or different, to wit, at, &c.; and because the said Edward and the said plaintiffs, before and at the said several times when, &c. were possessed of the said close called the Yard, in which, &c. and of the said trough, cistern, or reservoir, and of the water therein contained, and from time to time found and being, and occupied the same together undivided as tenants in common thereof, he the said Edward, at the said several times when, &c. broke and entered the said close called the Yard, in which, &c. and seized, took, and carried away the said quantities of water in the said declaration mentioned, and found and being in the said trough, cistern, or reservoir, as he lawfully might; and because the said cover in the said declaration mentioned, and before the said time when, &c. was wrongfully and injuriously erected, and was at the said several times locked, shut, and fastened with the said locks, lock boxes, staples, hinges, and hasps in the said declaration mentioned, in, over, and upon the said trough, cistern, or reservoir, inasmuch that the said Edward by reason thereof could not have, use, and enjoy the use and benefit thereof, or of the water therein contained, and found and being, without breaking open, wrenching open, forcing open, and in a small degree breaking to pieces, damaging, and spoiling the said trough, cistern, or reservoir in the said declaration mentioned, and the cover thereunto belonging, and the said lock, lock boxes, staples, hinges, and hasps with and by which the same was at those times locked, shut, and fastened, he the said Edward, at those several times when, &c. for the having, using, and enjoying of the use and benefit of the said trough, cistern, or reservoir, and of the water therein contained, and found and being, necessarily and unavoidably broke open, wrenched open, forced open, and in a small degree broke to pieces, damaged, and spoiled the said trough, cistern, or reservoir, and the cover thereunto belonging, and the said locks, &c. with and by which the same was at those times locked, &c. as he lawfully might for the cause aforesaid, doing as little damage on the occasion aforesaid as he possibly could, which are the same, &c. whereof, &c.; and this, &c.; wherefore, &c. [Another plea same as the second, only inserting that defendant, plaintiffs, and divers other persons whose names are to the said Edward unknown hold the yard as tenants in common.] W. LAMBE.

Replication,
traverses that
cistern was for
their joint use,
and *de injuria*,
&c.

And the said plaintiffs, as to the said plea of the said Edward by him secondly above pleaded in bar as to the breaking, &c. (*precludi non*); because they say, that the said Edward, at the said several times when, &c. wrongfully broke and entered the said close called the Yard, in which, &c. and interrupted and disturbed the said plaintiffs in the peaceable and quiet use, occupation, and enjoyment of the said close, and seized, took, and carried away the said quantities of water in the said declaration mentioned, and found and being in the said trough, cistern, or reservoir, and converted and disposed thereof to his own use, and broke open, &c. the said

said trough, &c. and the corn thereto belonging in the said declaration mentioned, and the said locks, &c. with and by which the same was at those times locked, &c. (*modo et forma*); without this, that the said Edward and the said plaintiffs, before and at the said several times when, &c. were possessed of the said close called the Yard, in which, &c. and of the said trough, &c., and of the water therein contained, and from time to time found and being, and occupied the same together undivided as tenants in common thereof (*modo et forma*); and this, &c.; wherefore, &c. [A like replication to last plea.]

Rejoinder, issue on traverse.

WM. LAMBE.

This cause was referred at the Summer Assizes 1789.

Plea 1st, Not Guilty: And for further plea in this behalf the said defendant, by leave of the court here for this purpose first had and obtained, according to the form of the statute in such case made and provided, says, that the said plaintiff ought not to have his said action thereof maintained against him; because he says, that the said ship or vessel in the said first Count of the said declaration mentioned, the said ship or vessel in the said second Count of the said declaration mentioned, the said ship or vessel in the said third Count of the said declaration mentioned, and the said ship or vessel in the said last Count of the said declaration mentioned were and are one and the same ship or vessel, and not divers or different ships or vessels, and that the said lock in the said first Count mentioned and the said lock in the said second Count mentioned were and are one and the same lock, and not divers and different locks, and that one J. B. before and at the said time when, &c. was and still is the owner and proprietor of the said ship or vessel in the said declaration mentioned, and in which, &c. to wit, at, &c. in, &c. and that the said James was then and there master of the said ship or vessel, and that he the said James, as the servant of the said J. B. and by his command at the said several times when, &c. broke and entered the said ship or vessel as being the ship or vessel of the said J. B. and broke open, broke to pieces, knocked to pieces, and spoiled the said lock in the said declaration mentioned, as being the lock of him the said J. B. and put, placed, and laid, and caused and procured to be put, placed, and laid the said quantities of clothes in the said declaration mentioned in and on board the said ship or vessel, as being the said ship or vessel of the said J. B. and kept and continued the same there for the said space of time in the said declaration in that respect mentioned, and thereby then and there incumbered the said ship or vessel as being the ship or vessel of the said J. B. and disturbed the said James in the free use and enjoyment thereof, and also made some little noise in and on board the said ship or vessel, as being the ship or vessel of the said J. B.

Plea (to a declaration in trespass for entering a ship and breaking open locks, &c.) that the ship belongs to one J. B. and that defendant, by the command, and as the servant of A. B. entered the ship and broke the lock, &c.

and then and there disturbed the said James and his servants in the possession, use, and enjoyment of the same as he lawfully might do for the cause aforesaid, which are the same trespasses in the introductory part of this plea mentioned, whereof the said James hath above complained against him the said James; and this, &c.; wherefore, &c. if, &c.

V. LAWES.

(a) Plea (to a declaration for entering and breaking closes, &c. taking away corn, &c.) poor person glean, &c.

HUNT
against

WORSDELL AND ANOTHER.

AND the said John and Elizabeth, by A. B. their attorney, come and defend the force and injury, when, &c. and as to all the trespasses in the said declaration mentioned, except as to the entering the said closes of the said plaintiff in the said first Count of the said declaration mentioned, and with her feet in walking treading down, trampling upon, consuming, and spoiling the grass in the said growing and being, and seizing, taking, and carrying away the said corn in the said first Count of the said declaration mentioned; and also except as to entering the said closes of the said Thomas in the said last Count of the said declaration mentioned, and with her feet in walking treading down, &c. the said grass in the said last Count of the said declaration mentioned by the said Elizabeth above supposed to have been done, they the said John and Elizabeth say, that she the said Elizabeth is not guilty thereof, in manner and form as the said plaintiff hath above thereof in his said declaration alleged; and of this they put themselves upon the country, &c. : And as to the said supposed trespass in the said plea above particularly mentioned and excepted, the said John and Elizabeth say, that the said plaintiff (*actio non*); because they say, that the said close in the said first and second Counts of the said declaration mentioned are, and at the said several times when, &c. were the same closes and not other or different: And the said John and Elizabeth further say, that the said closes in which, &c. a little before the said time when, &c. to wit, on the same day and year on the said declaration mentioned, had been sown with corn, to wit, with certain wheat, rye, &c. and that he the said plaintiff, a little before the said time when, &c. had reaped and cut down the crop growing in and upon the said closes in which, &c. from and out of the said closes in which, &c.; wherefore the said Elizabeth being a poor, necessitous, and indigent person after the crop growing in the year aforesaid in and upon the said close in which, &c. had been reaped, cut, and carried away by the said plaintiff from and off the said closes in which, &c. at the said times when, &c. entered into the said closes in which, &c. to glean and gather the ears of corn remaining and being dispersed and scattered about, and in the said closes in which, &c. after the said crop had been reaped, cut down, taken, and carried away as aforesaid, being the gleanings of the said crop for the necessary support of her the said Elizabeth, and did on that occasion, and at the said several times when, &c. glean

glean and gather the said ears of corn, the same being the gleanings of the said crop remaining dispersed and scattered abroad in and upon the said closes in which, &c. after the said crop had been so reaped, taken, and carried away as aforesaid, and carried away the same as it was lawful for her to do for the cause aforesaid, and in so gleaning and gathering the same she the said Elizabeth, at the said time when, &c. did with her feet in walking necessarily and unavoidably tread down, &c. a little of the said grass in the said declaration mentioned, doing as little damage on that occasion as she possibly could, which is the same entering, &c. whereof, &c.; and this, &c.; wherefore, &c.

VICARY GIBBS.

[Replication, protesting insufficiency for replication *de injuria sua absque tali causa*.]

(a) It has been decided in C. B. that this plea is bad, and that a right to glean cannot be claimed at common law. *Steel v. Houghton and Ux*, 1. H. Bl. Rep. 51.

Plea 1st, Not Guilty: And for further plea in this behalf as to the breaking and entering the said close in which, &c. and with feet in walking treading down, trampling upon, consuming, and spoiling the grass there lately growing, and seizing, taking, and leading away the said mare lately being and depasturing within the said close, and keeping and detaining the same: And also as to the seizing, taking, and leading away the said mare in the said second Count of the said declaration mentioned, and keeping and detaining the same, and converting and disposing thereof to his own use by the said defendant above supposed to have been done, he the said defendant, by leave of, &c. according, &c. says (*adlio non*); because he says, that the said mare in the said first Count of the said declaration mentioned and the said mare in the said second Count of the said declaration mentioned are, and at the said time when, &c. were one and the same mare and not other or different: And the said defendant further says, that he the said defendant, at the said time when, &c. by the leave and licence of the said plaintiff to him for that purpose first given and granted, to wit, at, &c. in, &c. entered into the said close, and with feet in walking tread down, trampled upon, consumed, and spoiled the grass there then growing and being, and seized, took, and led away the said mare, and kept and detained the same, and converted and disposed thereof to his own use, as the said plaintiff hath above in his said declaration alledged; and this, &c.; wherefore, &c. if, &c.

Plea (for entering into plaintiff's close, spoiling the grass, and taking a mare out of the same) leave and licence.

G. WOOD.

And the said plaintiff, as to the said plea of the said defendant by him secondly above pleaded in bar as to the premises in the introduction of that plea mentioned and above done by the said defendant, says, that he by reason of any thing in that plea alledged ought not to be barred from having and maintaining his aforesaid action hereof against the said defendant; because he says, that he the said defendant

Replication, *de injuria sua propria absque tali causa*.

defendant of his own wrong, and without any such cause as is by him in his said plea in that behalf above alledged, broke and entered the said close in the said declaration mentioned, and with feet in walking trod down, trampled upon, consumed, and spoiled the grafs there lately growing, and seized, took, and led away the said mare then lately being and depasturing in the said close, and kept and detained the same, and converted and disposed thereof to his own use in manner and form as the said plaintiff hath above thereof complained against him; and of this he puts himself upon the country, &c.

T. BARROW.

Declaration for
sawing a spout
leading from the
plaintiff's corn
chamber to his
steep vat, for
the purpose of
conveying grain.

RUTLANDSHIRE, to wit. M. B. complains of J. F.; for that the said defendant, on, &c. at, &c. with force and arms sawed afunder, cut to pieces, broke, and destroyed a certain wooden trunk or spout of him the said plaintiff of a large value, to wit, of the value of five pounds, leading from a certain room of him the said plaintiff called the Corn Chamber to a certain cistern or steep vat of him the said plaintiff, and used for the purpose of conveying grain from the said room unto the said cistern or steep vat: And also for that the said defendant, on, &c. at, &c. with force and arms sawed afunder, cut to pieces, broke, and destroyed a certain other trunk or spout of a large value, to wit, of the value of other five pounds, to wit, at, &c. in, &c. and the materials of the said wooden trunks or spouts coming of a large value, to wit, of the value of forty shillings then and there took and carried away, and converted and disposed thereof to his own use, and then and there did other wrongs to him the said plaintiff, against the peace of our said lord the new king, and to the damage of the said plaintiff of forty pounds; and therefore, &c.

Plea thereto.

1st, general issue; 2d, that the defendant seized in fee of a messuage, and because the said spout was fixed through the ceiling of the said house, and against the walls, incumbering same, &c. defendant pulled down the same.

Plea 1st, General Issue: And for further plea in this behalf as to the sawing afunder, cutting to pieces, breaking, and destroying the said wooden spout or trunk of the said plaintiff in the first Count of the said declaration mentioned, and also as to the sawing afunder, &c. the said spout or trunk of the said plaintiff in the second Count of the said declaration mentioned by the said defendant above supposed to have been done by leave, &c. (*adli non*); because he says, that the said wooden trunk or spout in the said first Count of the said declaration mentioned, and the said wooden trunk or spout in the said second Count of the said declaration mentioned are one and the same trunk or spout and not divers or different; and that he the said defendant, before and at the said time when, &c. was seized of and in a certain messuage or tenement, with the appurtenances, situate and being at, &c. in, &c. in his demesne as of fee; and because the said trunk or spout before and at the said times when, &c. was wrongfully and injuriously made, fixed, put, and placed in and through the ceiling of the said messuage or dwelling-house, and laid upon and placed in and through

through the walls of the said messuage or tenement of the said defendant, whereby the said messuage or tenement of the said defendant was greatly incommoded, and the said wall thereof was greatly impaired, weakened, damaged, and annoved, he the said John, at the said time when, &c. in order to abate the said nuisance did cut asunder, cut to pieces, break, and destroy the said trunk or spout there made, fixed, put, and placed in and through the said ceiling of the said messuage or tenement, and so laid upon, and placed in and upon and through the said walls, and did thereby abate the said nuisance, leaving the materials thereof coming for the use of the said plaintiff there as it was lawful for him to do, which is the same, &c. whereof, &c. ; wherefore, &c. if, &c.

E. DAYRELL.

And the said plaintiff, as to the said plea of the said defendant by him secondly pleaded in bar as to the sawing, &c. (*precludi non*) ; because the said plaintiff saith, that true it is that the said wooden trunk or spout in the said first Count of the said declaration mentioned, and the said trunk or spout in the said second Count of the said declaration mentioned are one and the same trunks or spouts and not divers or different ; but the said plaintiff further saith, that long before the said time when, &c. and before the said John was seised of the messuage or tenement, with the appurtenances, in the plea of the said John in that behalf mentioned, to wit, on, &c. one T. R. was seised in his demesne as of fee of and in the room now of the said plaintiff called the Corn Chamber in the declaration aforesaid mentioned, and also of and in a room called the Malting Chamber, wherein the cistern or steep vat in the declaration mentioned at the time when, &c. was put, placed, and fixed, and also of and in a piece of ground lying next to the gable end of the said malting office, containing six feet in length from the same, and eleven feet in breadth, upon which piece of ground a coach-house hath since been built (among other things) situate at, &c. in, &c. as also of and in the said messuage or tenement of the said defendant in the plea of the said defendant above in that behalf mentioned, and that before and on the said eleventh, &c. and from thenceforth and until and at the said time when, &c. the said trunk or spout in the said declaration mentioned was made, fixed, put, and placed in and through the ceiling of the said messuage or tenement of the said defendant in his plea aforesaid above-mentioned, and laid upon and placed in and through the walls of the said messuage or tenement of the said John, and was before and on the said eleventh day of, &c. and from thence during all the time aforesaid an appurtenant belonging to the aforesaid room called the Corn Chamber, the aforesaid room called the Malting Corn Chamber, and of the said coach-house, and usually occupied and enjoyed therewith for the purpose aforesaid, to wit, at, &c. ; and being to thereof seised, the said T. R. and Mary his wife afterwards, and long before the said time when, &c. to wit, on, &c. at, &c. in, &c. by a certain indenture of bargain and sale then

Replication, that before the defendant was seised of the messuage, T. R. was seised of the rooms in the declaration mentioned, now of plaintiff, and also of the said messuage, and that the spout was fixed through the ceiling of the messuage, and through the walls thereof, and was an appurtenance to the said rooms. T. R. bargained and sold the premises, except the messuage, to one W. M. for one year from, &c. statute of uses. Release. W. M. devised the premises by will to S. P. and T. M. and died ; wherefore they became seised, and demised to plaintiff as tenant from year to year.

and there made between the said T. R. and M. his wife of the one part, and one W. M. of the other part (one part of, &c.) for and in consideration of a certain sum of money therein mentioned to be paid by the said W. M. to the said T. R. and M. they the said T. R. and M. did bargain and sell all the premises aforesaid, except the said messuage or tenement of the said defendant, together with the appurtenances, to hold the same premises, with the appurtenances, unto the said W. M. his executors, administrators, and assigns, from the day next before the day of the date of the said indenture of bargain and sale, for and during and unto the full end and term of one year from thence next ensuing, and fully to be complete and ended, as by the said indenture, reference being thereto had, will more fully appear; by virtue of which said bargain and sale, and also by force of the statute made for transferring uses into possession, the said W. M. became and was seized of and in the said premises so bargained and sold, with the appurtenances, for the said term therein granted as aforesaid, the reversion of the said premises, with the appurtenances, belonging to the said T. R. and the reversion of the said premises, with the appurtenances, so belonging to the said T. R. afterwards, to wit, on, &c. at, &c. in, &c. by a certain indenture of release then and there made between the said T. R. and M. his wife of the one part, and the said W. M. of the other part, which said indenture, sealed with the seals of the said T. R. and M. his wife, he the said plaintiff now brings, &c. for the considerations therein mentioned, they the said T. R. and M. his wife did grant, alien, release, assign, and confirm unto the said W. M. his heirs and assigns, all the aforesaid premises in the aforesaid bargain and sale specified, together with all profits, advantages, and appurtenances whatsoever to the said granted and released premises belonging and appertaining, or with the same usually occupied and enjoyed, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof, and also all the estate, right, title, interest, use, possession, property, claim, or demand whatsoever of them the said T. R. and M. his wife, or either of them, of, in, or to the said granted and released premises, and every or any part or parcel thereof, to have and to hold the said premises, with the appurtenances, to the said W. M. his heirs and assigns, to the only use and behoof of him the said W. M. his heirs and assigns for ever, as by the said indenture, reference being thereunto had, will amongst other things more fully appear; by virtue whereof, and also by force of the statute made for transferring uses into possession, the said W. M. became and was seized of and in the said premises, with the appurtenances, in his demesne as of fee; and being so seized as aforesaid, he the said W. M. afterwards, to wit, on, &c. at, &c. in, &c. made his last will and testament in writing, bearing date the day and year last aforesaid, and thereby (amongst other things) devised the said premises, with the appurtenances, unto S. P. and T. N. and their heirs and assigns, to hold to them, their heirs and assigns for ever; and afterwards, to wit, on, &c. at, &c.

Release.

&c. in, &c. he the said W. M. died so seised of such his estate of and in the premises aforesaid, with the appurtenances, without altering or revoking his said will, upon whose death the said S. P. and T. N. then and there became and were, and still are seised in their demesne as of fee of and in the said premises, with the appurtenances: And the said plaintiff further saith, that the said S. P. and T. N. being so seised of and in the said premises, with the appurtenances, afterwards and long before the said time when, &c. to wit, on, &c. at, &c. they the said S. P. and T. N. demised all and singular the said premises, with the appurtenances, unto the said plaintiff, to hold the same unto the said plaintiff from thence for so long a time as the said S. P. and T. N. and the said plaintiff should please; by virtue of which said demise the said plaintiff afterwards, and before the said time when, &c. to wit, on, &c. entered into all and singular the said demised premises, with the appurtenances, and from thenceforth hitherto hath been and still is thereof possessed, and the said trunk or spout, at the said time when, &c. being so fixed in and through the said hole in the said ceiling, and upon and along, in and through the said wall of the said messuage or tenement of the said John for the purpose aforesaid, the said defendant, at the said time when, &c. to wit, at, &c. in, &c. of his own wrong sawed asunder, cut to pieces, broke to pieces, damaged, and destroyed the said wooden trunk or spout in manner and form as the said plaintiff hath above complained against said defendant; and thus, &c.; wherefore, &c.

J. MORGAN.

Plea 1st, General issue: And for further plea as to the breaking and entering the said closes in the said declaration mentioned, and with their feet in walking treading down, &c. the said grafs, hay, and corn there then growing and being, and with the said cattle in the said declaration mentioned depasturing, eating up, treading down, contuming, and spoiling the said grafs, hay, and corn there then also growing and being, and with the wheels of the said carts, carriages, and waggons, tearing up, &c. the soil in the said declaration mentioned, and seizing, taking, and carrying away the said hay in the said first Count of the said declaration mentioned there then found and being, and converting and disposing thereof to their own use; and also as to the seizing, taking, and carrying away the said hay in the said last Count of the said declaration mentioned, and converting and disposing thereof to their own use by the said defendants above supposed to have been done, they the said defendants, by leave, &c. (*ad id non*); because they say, that the said hay in the said first Count of the said declaration mentioned, and the said hay in the last Count of the said declaration

Plea (to a declaration for entering close, subverting soil with carts, and carrying away hay) that Dr. S. is prebendary of S. and that *locus in quo* is within the boundary of S. and that the tithes of hay are payable to the prebendary or his lessee, that Dr. S. demised the tithes of hay to one of the defendants (W. G.) for three lives, and the survivor of them,

whereby N. G. became entitled to said tithes, the three lives still living, and that plaintiff cut down a quantity of hay, grafs, and made same into hay, and put same into eacks divided, &c. as for the tithes, and the tithes being so severed, defendants, as servants to N. G. entered, &c.

ration

ration mentioned was the same hay and hay arising from the said closes in which, &c. and that the reverend G. S. doctor in divinity, long before the said time when, &c. was prebendary of the prebend of Stoke, in the county of N. and that the said closes in which, &c. in the said declaration mentioned, at the said times when, &c. were, and from time immemorial have been closes of land lying and being in the parish of Stoke, in the said county of N. and within the bounds, limits, and titheable places of the said prebend, and that all and singular the tithes of hay yearly growing, increasing, renewing, and coming off the said closes in which, &c. from time whereof the memory of man is not to the contrary have been payable, and of right ought to have been paid, and been used to be paid to the prebendary of the said prebend, or his lessees of the said tithes for the time being, of right have belonged and appertained to the prebendary of the said prebend or his lessee of the said tithes; and the said G. S. so being prebendary as aforesaid afterwards and before any of the said times when, &c. to wit, on, &c. at, &c. in, &c. by a certain indenture then and there made between the said G. S. of the first part, one W. G. of the second part, and one J. P. and one W. J. of the third part (one part, &c.) did demise, grant, lease, and to farm-let unto the said W. G. (amongst other tithes) the tithe of hay yearly growing, increasing, renewing, and coming off the said closes in which, &c. to have and to hold the same unto the said W. G. from thenceforth for and during the natural lives of the said C. S. then the wife of the said G. S. and of G. S. eldest son of N. S. and of W. S. the second son of the said W. S. and the life of the survivor of them; by virtue of which said demise and grant the said W. S. afterwards and before any of the said times when, &c. to wit, on, &c. became and was, and still is entitled to the said tithes so demised and granted to him as aforesaid for and during the natural lives of the said C. S. G. S. the son, and W. S. the younger, and which said C. S. G. S. the son, and W. S. the younger, are still living: And the said defendants further say, that the said plaintiff, before any of the said times when, &c. to wit, on, &c. at, &c. had mowed and cut down a great quantity of hay grass in that year growing in the said closes in which, &c. and had made the same into hay, and put the same hay into cocks, and the tenth part of the said hay, at the said time when, &c. was lying and being in the said close in which, &c. and severed from the nine parts of the said hay, as for the tithe of the same hay of right due to the said W. G. as lessee thereof as aforesaid, and the said tithes so being severed as aforesaid, the said defendants, as servants of the said W. G. and by his command, and at the said times when, &c. with the said carts, carriages, and other waggon, as in the said declaration mentioned, drawn with the said cattle in the said declaration mentioned, did enter into the said closes in which, &c. by, through, and along the usual ways and entrances for the purpose of fetching, taking, and carrying away the said tenth part of the said hay there, and then and there did take and carry away the said tenth part of the said

TO TAKE TITHES—REPLICATION.

315

said hay as the tithes of the said hay so arising and made from the grafs in that year growing in the said closes in which, &c. out of the said closes in which, &c. with the said carts, waggons, and other carriages, as it was lawful for them to do, and in so doing they the said defendants, at the said times when, &c. necessarily and unavoidably with their feet in walking trod down, &c. a little of the said hay, grafs, and corn then growing in the said closes in which, &c. and the said cattle in the said declaration mentioned, in going and returning into, from, and out of the said closes in which, &c. in drawing the said carts, waggons, and other carriages in the said declaration mentioned on the occasion aforesaid at the said times when, &c. by stealth, and against the will of the said defendants, depastured, &c. a little of the said other grafs, hay, and corn then growing in the said closes, and the wheels of the said carts, &c. in passing and repassing into and along the said closes in which, &c. on the occasion aforesaid, tore up, &c. a little of the soil there in the said several closes in which, &c. doing as little damage on that occasion as they possibly could, which are the same, &c. whereof, &c. and this, &c.; wherefore, &c. [Add a second plea of leave and licence.]

WM. BALDWIN.

And the said plaintiff, as to the said plea of the said defendants by them secondly above pleaded in bar as to the said several trespasses in the introduction to that plea mentioned, and thereby acknowledged to be committed (*procludi non*); because he says, that the said defendants, at the said several times when, &c. of their own wrong broke and entered the said closes in the said declaration mentioned, and with their feet in walking trod down, trampled upon, consumed, and spoiled the said hay, grafs, and corn there then also growing, and with the said cattle in the said declaration mentioned eat up, depastured, trod down, consumed, and spoiled the said hay, &c. there then also growing and being, and with the wheels of the said carts, waggons, and other carriages, tore up, rooted up, subverted, and spoiled the soil in the said declaration mentioned, and seized, took, and carried away the said hay in the said declaration mentioned, and converted and disposed thereof to their own use in manner and form as the said plaintiff hath above in his said declaration alleged, *nam scilicet* that the tenth part of the said hay, at the said times when, &c. was lying and being in the said closes in which, &c. and severed from the same, the tenth part of the said hay as, for the tithes of the same hay of right due to the said W. G. he sees thereof as aforesaid, as the said defendants have above in their said plea alleged; and this, &c.; wherefore, &c. [Add a plea of leave and licence.]

Replication
in bar of the
traverse of the
said plea of
leave and
licence.

Rejoinder to replication to second plea, takes issue on the traverse.

PLEA—LIGENCE IN LAW—(TO ABATE NUISANCE.)

Easter Term, 15 Geo. 3.

Plea, 1st, Not Guilty.

WATSON AND OTHERS }
at suit of
HORGES.

AND the said defendants, by A. B. their attorney, come and defend the force and injury when, &c. and say,

and, that the goods were on a stage in the king's highway, obstructing same, wherefore defendants removed the stage and goods to a convenient place, and left the same for plaintiff's use.

that they are not guilty of the said trespass in manner and form as the said plaintiff hath above thereof complained against them, and of this they put themselves upon the country, &c. : And for further plea as to the seizing, taking, and carrying away the said goods and chattels in the said declaration mentioned above supposed to be done by the said defendants, the said defendants by leave of, &c. (*actio non*) ; because they say, that long before and at the time when the said trespass in the said declaration mentioned is above supposed to have been committed, there was, and still is a certain common and public king's highway leading from, &c. in, &c. into and through, &c. in, &c. and so back again from thence into and through, &c. to, &c. aforesaid, for all the liege subjects of our said lord the king to go, return, pass, and repass, as well on foot as on horseback, and with their cattle, coaches, carts, waggons, and other carriages, every year at all times of the year at their free will and pleasure, and that just before and at the said time when, &c. the said goods and chattels in the said declaration mentioned were on and upon a certain erection commonly called a stage, the same then being and standing in the said highway, and stopping up and obstructing the same, so that the liege subjects of our said lord the king could not go, return, pass, or repass, either on foot or on horseback, or with their cattle, &c. as they were used and accustomed to do and then of right ought to have done, to wit, at, &c. wherefore they the said defendants, in order to remove the said nuisance and obstruction and to open the said highway, did remove the said stage with the said goods and chattels of the said plaintiff in the said declaration mentioned then being on the said stage to a small distance, to wit, unto a safe and secure place, to wit, at, &c. and there left the same for the use of the said plaintiff, the same being a proper and convenient place for that purpose as they lawfully might for the cause aforesaid, which are the said seizing, &c. whereof the said plaintiff hath above complained against them the said defendants; and this, &c.; wherefore, &c. J. MORGAN.

BY AUTHORITY OF LAW. AND UNDER LEGAL PROCESS.

Plea of justification, for that defendant was captain of the militia, and the

And the said James, by A. B. his attorney, comes and defends the force and injury when, &c. and says, that he is not guilty of the trespass above laid to his charge in manner and form as the plaintiff being liable to serve refused so to do, being disaffected to government.

Laid

said John hath above thereof complained against him, and of this he puts himself upon the country, &c.: And for further plea as to the assaulting the said John, and imprisoning him, and keeping and detaining him in prison for the said space of time in the said first Count of the said declaration mentioned by the said James above supposed to be done, he the said James, by leave of &c. according to, &c. says (*affio non*); because he says, that long before, and at the said time when the trespass aforesaid in the first Count of the said declaration mentioned is supposed to have been done, and long afterwards, many persons in his majesty's colony of New York, in North America, and in divers other of his majesty's colonies in North America, had set themselves and were in open rebellion to the just and legal authority of the king and parliament of Great Britain, and had assembled together an armed force to engage his said majesty's troops there, and attacked his forts, and had usurped the powers of government and prohibited all trade and commerce with this kingdom and the other parts of his majesty's dominions, and in consequence of which said rebellion, his present majesty, long before the said time when, &c. in the said first Count of the said declaration mentioned, had sent over, as well to the said colony of New York, as to the said other colonies in North America aforesaid, a great armament both by sea and land, in order to suppress and quell the said rebellion: And the said James further saith, that he the said James, long before the said time when, &c. in the said first Count of the said declaration mentioned had been, and at the said time when, &c. and afterwards the said rebellion then continuing, was his majesty's captain general and commander in chief in and over the said colony or province of New York, and the territories depending thereon in North America, and commander in chief of the militia of the said province, and that before, and at the said time when, &c. in the first Count of the said declaration mentioned, and during the continuance of the said rebellion, the said James was at the city of New York, in the province of New York aforesaid, then and there as such captain general and governor in chief and commander as aforesaid, then and there having the command of the militia of the said province and city of New York aforesaid, in order and to the intent therewith, by his said majesty's authority, to suppress and quell the said rebellion; and to defend the said town or New York against the said rebels; and the said James further saith, that before, and at the said time when, &c. in the said first Count of the said declaration mentioned, he the said John was a subject of our said lord the king, and an inhabitant of the said city of New York, and bound to serve in the militia of New York aforesaid, then under the command of the said James as captain general and governor and commander as aforesaid, and as such was then and there bound and obliged to serve under the command of the said James in suppressing the said rebellion and defending the said city of New York against the said rebels, and that before and at the said time when, &c. in the first Count of the said declaration

TRESPASS.—PLEA—LICENCE IN LAW (a)—

mentioned, a great army of and belonging to the said rebels in the said province of New York were near to and preparing to attack the said city of New York in an hostile manner, and to take it by force from the possession of his majesty, and the said city and the inhabitants thereof were in imminent danger, whereupon the said James, at the said time when, &c. in the first Count of the said declaration mentioned, the said rebellion then continuing, commanded the said John to serve in the militia under the command of the said James, in defence of the said city against the said rebels, and in opposing and resisting the said rebels, as he the said John was bound to do as aforesaid, which he the said John then and there obstinately and wilfully neglected and refused to do, whereupon the said James, as captain general, governor, and commander as aforesaid, for the necessary preservation of good discipline, obedience, and subordination of the militia and other inhabitants of the said city, and in order to prevent any treachery or mutiny from the said disobedience of the said John afterwards, to wit, at the said time when, &c. in the said first Count of the said declaration mentioned, at, &c. put the said John under a guard and arrest, and then detained him for the said space of time in the said first Count of the said declaration mentioned, the said rebellion during all that time then and there continuing, and the said imprisonment of the said John then and there being necessary and proper on the occasion aforesaid, as it was lawful for the said James so to do for the cause aforesaid, which is the same assaulting, imprisoning, and detaining the said John, in the said first Count of the said declaration mentioned, and whereof the said John hath above complained against him; and this, &c.; wherefore, &c. if, &c.

G. WOOD.

Plea (to trespass for entering closes, treading down grass, &c.) that the inhabitants of the parish by custom at their pleasure have perambulated the parish to remark its limits, and for that purpose did enter locus, &c.

PLEA 1st, General Issue: And for further plea as to the breaking and entering the said closes in the said declaration mentioned, and with their feet in walking, treading down, trampling upon, spoiling, and consuming the said grass of the said plaintiff, and with spades, &c. [Trespals as in the declaration] above supposed to have been committed by the said defendants; they the said defendants say (*attio non*); because they say that they long before, and at the said times when, &c. were, and still are inhabitants of the said parish of C. and that within the said parish of C. there is, and from time whereof, &c. hath been, a certain ancient custom used and approved there, that the inhabitants of the said parish for the time being, at their respective wills and pleasures at convenient and seasonable times, have perambulated the said parish of C. to view and remark the boundaries and limits thereof, and in their such perambulation have for all the time aforesaid used and been accustomed to go into and through the said closes in which, &c. in the said declaration mentioned, for the better and more true viewing and remarking the boundaries of the said parish, wherefore the said defendants being inhabitants of the said parish as

(a) To perambulate parish boundaries.

aforesaid,

REPLICATION—NEW ASSIGNMENT.

aforesaid, with other inhabitants of the said parish, at the said time when, &c. the same being seasonable and convenient times for that purpose, did perambulate the said parish, to view and remark the limits and boundaries thereof, and did go and pass in, through, and over the said closes in the said declaration mentioned, in making the said perambulations in the usual and accustomed way there, as it was lawful for them to do for the cause aforesaid, and in so doing, they of necessity trod down and consumed a little of the grass there then growing in the said closes in which, &c. and because the said gates, &c. in the said declaration mentioned, at the said times when, &c. were erected in the said close in which, &c. in such manner, that they the said defendants, in perambulating the boundaries of the said parish as aforesaid, could not walk into, through, and over the said closes in which, &c. in the usual and accustomed way there as had before been usually done, without a little breaking and pulling down the same, they at the said times when, &c. necessarily with spades, &c. a little pulled and broke down the gates, &c. for the purpose aforesaid, and the bricks, &c. thereof coming took and carried away at a little distance, and left the same there for the use of the said plaintiff, and in so doing necessarily and unavoidably cut, made, and dug a few holes and pits in the said closes, in the said declaration mentioned, doing as little damage on that occasion as they possibly could, which are the same, &c.; whereof, &c.; and this, &c.; wherefore, &c.

F. BULLER.

And the said plaintiff, as to the said plea of the said defendants by them secondly above pleaded in bar as to the breaking, &c. above committed by the said defendants (*precludi non*); because he says, that the said defendants, at the said time when, &c. of their own wrong, entered, &c. as the said plaintiff hath above complained against them; without this, that within the said parish of C. there is, and from time whereof, &c. hath been a certain ancient custom there used and approved of, that the inhabitants of the said parish for the time being, at their respective wills and pleasures at convenient and seasonable times, have perambulated the said parish of C. to view and remark the boundaries and limits thereof, and in their said perambulation have for all the time aforesaid been used and accustomed to go into and through the said close in which, &c. in the said declaration mentioned for the better and more true and better reviewing and remarking the boundaries of the said parish as they the said defendants have in their said plea secondly above pleaded in bar in that behalf alleged; and this, &c.; wherefore, &c.: And the said plaintiff further says, that he the said plaintiff sued out his original writ, and brought his said action against them the said defendants, as well for the said trespass by them in their said plea secondly above pleaded in bar acknowledged to have been done, as for that they the said defendants at other times, and on other occasions than in that plea mentioned, and out of the said supposed way in that

Replication.

New
ment.

assign

New
ment.

assign

TRESPASS.—PLEA—LIBERUM TENEMENTUM.

plea mentioned, broke and entered the said closes in the said declaration mentioned, and with their feet, &c. as the said plaintiff hath above thereof complained against them, which are other and different trespasses from the said trespasses by them the said defendants in their said plea by them lastly above pleaded in bar acknowledged to have been committed; and this, &c.; wherefore inasmuch as they the said defendants have not answered to the said trespasses above newly assigned, he the said plaintiff prays judgment and his damages, by reason of the committing thereof, to be adjudged to him.

F. BULLER.

Issue on traverse, and *non culp.* to new assignment.

Plea to declaration in trespass. If, not guilty.

HARCOURT }
at suit of }
SIMS.

AND the said J. by A. B. his attorney, comes and defends the wrong and injury when, &c. and says, that he is not guilty of the

Id. plea as to breaking and entering the dwelling-house and premises, that they belonged to one A. B. and that defendant as servant of A. B. and by his command entered upon the premises.

trespass aforesaid above laid to his charge in manner and form as the said H. S. hath above thereof complained against him, and of this he puts himself upon the country, &c.; and the said H. S. doth the like, &c.: And for further plea in this behalf as to, &c. above supposed to have been committed by the said J. he the said J. says, (*actio non*); because he saith, that the said dwelling-house, &c. in the said declaration mentioned, long before and at the said time when, &c. were, and still are the dwelling-house, &c. soil and freehold of one sir H. T. baronet, to wit, at, &c. for which reason he the said J. as the servant of the said sir H. T. and by his command, on, &c. being the time when, &c. broke and entered the dwelling-house, &c. in the said declaration mentioned, as being the dwelling-house, &c. soil and freehold of the said sir H. T. and there said, &c. &c. and because the said H. S. was then and there wrongfully and injuriously in the possession and occupation of the said dwelling-house, without the consent and against the will of the said sir H. T. he the said J. did on that occasion a little disturb, &c. as of the dwelling-house and freehold of the said sir H. T. and ejected, &c. &c. as he lawfully might for the cause aforesaid, which are, &c. whereof the said H. S. hath above complained against him the said J. and this, &c.; wherefore, &c.; if, &c.: And for further plea in this behalf as to the breaking, &c. above supposed to have been committed by the said J. he the said J. by like leave of, &c. (*actio non*); because he saith, that the said sir H. T. long before and at the said time when, &c. at, &c. was seised, and still is seised in his demesne as of fee of and in the said dwelling house, &c. in the said declaration mentioned, and in which, &c. and being so seised thereof, he the said H. S. immediately from and after the feast of St. Michael the Archangel, A. D. 1768, until and at the feast of St. Michael the Archangel, A. D. 1769, and from thence until and

Id. plea, that A. B. being seised of the premises demised, came to plaintiff under a yearly rent, and that there being rent due and plaintiff having asserted the premises so that no distress could be made, A. B. made complaint to two justices of the peace, who thereupon viewed the premises, and did then and there fix on the premises a notice that they would make a second view on a certain day which they did, and plaintiff not appearing to pay the rent, and there being nothing to disturb, the justices put A. B. into possession, whereupon defendant as servant of A. B. entered.

at the said time when, &c. enjoyed the said dwelling-house, &c. in which, &c. with the appurtenances, by virtue of and under a certain demise thereof, before then made by the said sir H. T. to the said H. S. at and under a certain yearly rack rent of, &c. payable from the said H. S. to the said sir H. T. at the feasts of, &c. by even and equal portions; and the said H. S. during all that time held the same of the said sir H. T. as his tenant thereof, by virtue of the said demise under the rack rent aforesaid payable as aforesaid; and the said H. S. being so possessed of the said demised premises by virtue of and under the said demise as aforesaid, pounds of the said yearly rent of pounds for one year of the said term ended on the feast of, &c. on that day became due and owing from the said H. S. to the said sir H. T. and from thence until and at the time when, &c. remained and continued, and still doth remain and continue in arrear and wholly unpaid to the said sir H. T. and the said one year's rack rent of the said demised premises being so due and in arrear and unpaid from the said H. S. to the said sir H. T. he the said H. S. after the said one year's rack rent was so due, owing, in arrear, and unpaid as aforesaid, and before the time that the same so was, and remained and continued in arrear and unpaid as aforesaid, and before the eleventh day of, &c. deserted the said demised premises, in which, &c. and left the same uncultivated and unoccupied, so as no sufficient districks could be thereon made to countervail the said arrears of rent, whereupon the said sir H. T. afterwards and before the time when, &c. to wit, on, &c. according to the form of the statute in such case made and provided, made complaint unto T. B. esq. and E. L. clerk, then and still being two of the justices of our lord the now king, assigned to keep the peace in and for the said county &c. and also to hear and determine divers felonies, trespasses, and other misfeids committed in the said county; and they the said T. B. and E. L. then and there not having, nor either of them having any interest in the said demised premises, or any part of the premises aforesaid, and then and there requested the said justices personally to go upon and view the said demised premises for the purpose of acquainting themselves with the truth of the said complaint, and to affix on the most notorious part of the said premises a notice in writing under their hands and seals that they the said justices would at a proper time therein to be mentioned return and take a second view thereof, and to execute the statute in such case made and provided, in order to put the said sir H. T. into the possession of the said demised premises: And the said J. further saith, that in consequence of the said complaint of the said sir H. T. and in compliance with his request, the said T. B. and E. L. so being such justices of the peace as aforesaid, did afterwards and before the time when, &c. to wit, on, &c. personally go upon and view the said demised premises, with the appurtenances, for the purpose aforesaid, and then and there upon such view thereof found the said complaint of the said sir H. T. to be true; and the said T. B. and E. L. the justices aforesaid having so taken a view

(a) And under legal process, before justices of the peace, to enter vacant house,

of the said premises as aforesaid for the purpose aforesaid, and found the said complaint of the said sir H. T. to be true as aforesaid, did then and there affix on the most notorious part of the said premises, to wit, on the door of the said dwelling-house a certain notice in writing under their hands and seals, thereby signifying that they the said justices would on, &c. return and take a second view thereof: And the said J. further saith, that they the said justices did afterwards and before the said time when, &c. to wit, on, &c. according to the form of the statute in such case made and provided, and in conformity to the said notice, return, come upon, and take a second view of the premises aforesaid, and then and there upon their own view did find that the said H. S. did not appear, nor did any person or persons in his behalf appear and pay the said rent so then in arrear, and that there was no sufficient distress upon the premises aforesaid, nor upon any part thereof to countervail the said arrears of rent, and thereupon the said justices did then and there, according to the form of the statute in such case made and provided, put the said sir H. T. into the possession of the said demised premises, and thereby the said demise so made to the said H. S. of the said premises in which, &c. then and there became from thence utterly void, and thereupon the said J. afterwards, to wit, on, &c. being the time when, &c. as the servant of the said sir H. T. and by his command at, &c. entered the said dwelling-house, &c. in which, &c. and there staid, &c. as being the freehold of the said sir H. T. and made a noise, &c. &c. as he lawfully might for the cause aforesaid, which are, &c. whereof, &c.; wherefore, &c.: And for further plea in this behalf as to the said supposed, &c. to have been committed by the said J. he the said J. by like leave of, &c. says (*adlio non*); because he saith, that the said sir H. T. long before and at the time when, &c. was, and still is seised in his demesne as of fee of and in the said dwelling-house in the said declaration mentioned, and in which, &c. and being so thereof seised, he the said sir H. T. afterwards and before the said time when, &c. to wit, on, &c. demised the said dwelling-house, &c. in the said declaration mentioned, in which, &c. to the said J. to have and to hold the same unto the said J. from the feast of, &c. then last past, for and during the full end and term of seven years from thence next ensuing, and fully to be complete and ended; by virtue of which said demise he the said John afterwards and before the time when, &c. to wit, on, &c. entered into the said dwelling house, &c. in which, &c. with the appurtenances, and was thereof possessed for the said term so to him thereof demised as aforesaid, and being so thereof possessed, the said H. S. claiming title to the said premises in which, &c. with the appurtenances, under colour of a certain charter of demise pretended by the said H. S. to have been made by the said sir H. T. to the said H. S. for the term of the natural life of the said H. S. before the making of the said demise to the said J. whereas nothing whatsoever of the said dwelling-house, &c. in which, &c.

4th plea, justifying under a demise for seven years, giving colour of demise to plaintiff for

or of any part thereof, by that charter ever passed into the possession of the said H. S. afterwards, and before the said time when, &c. to wit, of, &c. of his own wrong entered into the said dwelling-house, &c. in which, &c. and thereby became wrongfully thereof possessed, upon whose possession thereof the said J. afterwards, to wit, on, &c. being the time when, &c. into the said dwelling-house, &c. in which, &c. in and upon the possession of the said H. S. thereof reentered as into the messuage, &c. of him the said J. and there staid, &c. as being, &c. and ejected, &c. as being, &c. as he lawfully might for the cause aforesaid, which are, &c.; whereof, &c.; and this, &c.; wherefore, &c.

W. DAVY.

SIMS } And the said H. as to the said plea of the said J. Replication as
against } by him secondly above pleaded in bar as to the to the breaking,
HARCOURT. } breaking and entering the said dwelling-house, &c. &c. &c. in de-
in the said declaration mentioned, and in which, &c. and there- claracion men-
staying and continuing for the said time in the said declaration in tioned, that de-
that behalf mentioned, and making a noise and disturbance in the fendant de inju-
said dwelling-house, and disturbing and disquieting the said Henry ria, &c.
in the possession and occupation thereof, and ejecting, putting Replication to
out, expelling, and amoving the said Henry from the possession 3d. plea. that
and occupation of the dwelling-house, &c. aforesaid, and keeping there was not a
and continuing the said Henry so thereout expelled, &c. from the year's rent due
possession and occupation of the said dwelling-house, &c. for the and that defend-
said time in the said declaration in that behalf mentioned, ant de injuria, &c.
and treading down, and consuming and spoiling the grass and corn in the said closes lately growing with his feet in walking, and eating up, treading down, consuming, and spoiling the said other grass and corn there also lately growing, with the said cattle in the said declaration mentioned, and with ploughs, and with the wheels of carts, waggons, and other carriages, ploughing up, turning up, subverting, and spoiling the soil of the said several closes, and sowing the said soil with corn and grain, and erecting, planting, and setting up the said hedges and fences in the said declaration mentioned in and upon the said closes, and keeping and continuing them so erected, planted, and set up for the said time in the said declaration in that behalf mentioned in and upon the said closes, and thereby and therewith in closing and shutting up the said several closes, and putting, laying, placing, and spreading the said dung, manure, and compost in the said declaration mentioned in and upon the said closes, and mowing, reaping, and cutting down the said grass there lately growing in the said closes, and taking and carrying away the same above committed by the said John, says, that he the said H. S. by any thing by the said John in his said second plea above alledged ought not to be barred from having his aforesaid action maintained against him, because he saith, that true it is that the said dwelling house, &c. in the said declaration mentioned, long before and at the time when, &c. were, and still are the dwelling-house of the said sir

TRESPASS.—REPLICATION.

H. T. to wit, at, &c. as the said John hath in his said second plea in that behalf alledged; but the said Henry further saith, that the said dwelling-house, &c. in which, &c. so being the dwelling-house, &c. soil and freehold of the said sir H. T. as aforesaid, he the said sir H. T. long before the said time when, &c. to wit, on the feast day of, &c. at, &c. demised the said dwelling-house, &c. in which, &c. with the appurtenances, to the said Henry, to hold the same to the said Henry from thenceforth for and during and unto the full end and term of one year from thence next ensuing and fully to be complete and ended, and so from year to year for so long a time as the said H. T. and the said sir H. T. should please; by virtue of which said demise he the said Henry afterwards. and before the said time when, &c. to wit, on, &c. entered into the said dwelling-house, &c. in which, &c. with the appurtenances, and was, and from thence until and at the said time when, &c. continued so thereof possessed under and by virtue of the demise aforesaid, and the said H. S. being so thereof possessed as aforesaid, he the said John, at the said time when, &c. of his own wrong, and without the residue of the cause as is by the said John in his said second plea in that behalf above alledged, broke and entered the said dwelling-house, &c. in the said declaration mentioned, in which, &c. and there staid and continued, &c. &c. to wit, at, &c. in manner and form as the said Henry hath above thereof complained against him the said John; and this, &c.; wherefore inasmuch as the said John hath above acknowledged the trespass aforesaid above done, he the said Henry prays judgment and his damages, on occasion of the trespass aforesaid, to be adjudged to him, &c.: And the said Henry, as to the said plea by him thirdly above pleaded in bar, as to the breaking and entering, &c. [as before] above committed by the said John, says that, &c. (*precludi non*); because he saith, that true it is that the said sir H. T. long before, and at the said time when, &c. at, &c. was, and still is seised in his demesne as of fee of and in the said dwelling-house, &c. in the said declaration mentioned, and in which, &c. in manner and form as the said John hath above in his said plea in that behalf alledged, and that the said sir H. T. being so seised thereof, he the said H. S. immediately from and after the said feast day of, &c. until and at the feast of, &c. and from thence until and at the said time when, &c. enjoyed the said dwelling-house, &c. in which, &c. with the appurtenances, by virtue of and under the said demise in the said plea in that behalf mentioned, at and under the said yearly rent in that behalf mentioned, payable as in the said plea in that behalf mentioned, in manner and form as the said J. hath above in his said plea in that behalf alledged, and that the said Henry, during all that time, held the same of the said sir H. T. as his tenant thereof by virtue of the said demise, under the rack rent aforesaid, payable as aforesaid, in manner and form as the said J. hath above in his said third plea in that behalf alledged; but protesting that the said plea of the said John so by him thirdly above pleaded in bar as aforesaid, in manner and form as the same is

above

above pleaded and set forth, and the matters therein contained, are not sufficient in law to bar the said Henry from having and maintaining his aforesaid action thereof against the said John; protesting also, that forty-six pounds of the said yearly rack rent of forty-six pounds for one year of the said term, ending on the feast day of, &c. was not at the time when, &c. in arrear and unpaid to the said sir H. T. in manner and form as the said John hath above in his said third plea in that behalf alledged; nevertheless for replication in this behalf the said Henry saith, that he the said John, at the said time when, &c. of his own wrong, and without the residue of the cause by the said John in the said third plea in that behalf above alledged, broke and entered, &c. &c. to wit, at, &c. in manner and form as the said Henry hath above thereof complained against him the said John; and this he the said Henry prays may be enquired of by the country; and the said John doth the like, &c.: And the said Henry, as to the said plea of the said John by him lastly above pleaded in bar as to the breaking, &c. [as in second replication] above committed by the said John (*precludi non*); because he saith, that true it is that the said sir H. T. at the said time when, &c. at, &c. was, and still is seised in his demesne as of fee of and in the said dwelling-house, &c. in the said declaration mentioned, and in which, &c. in manner and form as the said John hath in his said last plea in that behalf above alledged; protesting nevertheless that the said sir H. T. did not demise the said dwelling-house, &c. in the said declaration mentioned, and in which, &c. to the said John in manner and form as the said John hath in his said last plea in that behalf above alledged; yet for replication in this behalf the said H. saith, that the said sir H. T. whilst he was so seised thereof, and before the said time when, &c. and also before the making of any demise of the said dwelling-house, &c. in the said declaration mentioned, and in which, &c. or of any or either of them to the said John to wit, on, &c. at, &c. demised the said dwelling-house, with the appurtenances, in which, &c. to the said Henry, to hold the same unto the said Henry from thenceforth for and during and unto the full end and term of one year from thence next ensuing and fully to be complete and ended, and so from year to year for so long time as the said Henry and sir H. T. should please; by virtue of which said demise he the said H. afterwards, and before the said time when, &c. to wit, on, &c. entered into the said dwelling-house, &c. in which, &c. with the appurtenances, and was, and from thence until and at the said time when, &c. continued so thereof possessed under and by virtue of the demise aforesaid; and the said Henry being so thereof possessed as aforesaid, he the said John, at the said time when, &c. of his own wrong, and without the residue of the cause by the said John in his said last plea in that behalf above alledged, broke and entered, &c. &c. to wit, at, &c. in manner and form as the said H. hath above thereof complained against him; and this, &c.; wherefore inasmuch as the said John hath above acknowledged the trespass aforesaid above done, he the said

4th plea, tenant
at will, and *de*
injuria, &c.

TRESPASS.—REJOINDER.—SURREJOINDER.—

H. prays judgment and his damages, on occasion of the trespass
aforesaid, to be adjudged to him.

R. LEIGH.

Rejoinder, that
A. B. did not
demise.

And the said John, as to the said plea of the said Henry by him
above pleaded by way of reply to the said plea of the said John by
him secondly above pleaded in bar as to, &c. &c. &c. above sup-
posed to have been committed by the said John, says, that *the said*
sir H. T. did not demise to the said H. the said dwelling-house, &c.
in which, &c. in manner and form as the said H. hath in his said
replication in that behalf alledged; and of this the said John puts
himself upon the country; and the said Henry doth the like: And
the said John, as to the said plea of the said Henry above pleaded
by way of reply to the said plea of the said John by him fourthly
above pleaded in bar as to, &c. above supposed to have been com-
mitted by the said John, says, that *the demise in that replication*
mentioned to have been made by the said sir H. T. to the said Henry,
before the first time when, &c. to wit, on, &c. *was duly ended and*
determined, to wit, at, &c.; and thereupon the said sir H. T. after
the end and determination of that demise, and before the first
time when, &c. to wit, on, &c. demised the said dwelling-house,
&c. in which, &c. to the said John in manner and form as the
said John hath above in his said last plea in bar alledged; and this,
&c.; wherefore, &c. if, &c.

W. DAVY.

Surrejoinder,
protesting that
A. B. did not
demise the pre-
mises to defend-
ant, and that
the demise to
plaintiff was not
ended, and issue.

And the said Henry, as to the said plea of the said John by him
above pleaded by way of rejoinder to the said plea of the said Henry
above pleaded by way of reply to the said plea of the said John
fourthly above pleaded in bar as to, &c. &c. above committed by
the said John, says, that he said Henry, by any thing in the said
plea of the said John so pleaded by way of rejoinder, ought not to
be barred from having and maintaining his aforesaid action thereof
against the said John; because protesting that the said plea so
pleaded by way of rejoinder, and the matters therein contained,
are not sufficient in law to bar the said Henry from having his
aforesaid action thereof maintained against the said John; pro-
testing also that the said sir H. T. *did not demise the said dwelling-*
house in which, &c. to the said John in manner and form as the
said John hath above in his said plea so pleaded by way of rejoinder
alledged; nevertheless for surrejoinder in this behalf the said Henry
saith, that the said demise in the said replication of the said Henry
mentioned to have been made by the said sir H. T. to the said J.
was not before or at the said first time when, &c. duly ended and
determined in manner and form as the said J. hath above in his
said plea so pleaded by way of rejoinder alledged; and this he the
said Henry prays may be enquired of by the country; and the said
John doth the like, &c.; therefore, &c.

R. LEIGH.

WITHOUT

WITHOUT PROCESS.

HUDSON } DECLARATION for an assault and false im-
against } prisonment.
 HASELDEN. }

And the said John Haselden, by John Gotobed his attorney, Plea, that plain- comes and defends the force and injury, when, &c. and says, that he is not guilty of the premise above laid to his charge in manner and form as the said Orindie hath above thereof complained against him; and of this he the said John Haselden puts himself upon the country, &c.: And the said John Haselden, for further plea in this behalf as to the making of the said assault upon her the said Orindie, and imprisoning her, and keeping and detaining her in prison as in the first Count of the said declaration mentioned, and above supposed to have been committed by the said John Haselden, he the said John Haselden, by leave, &c. says, that the said Orindie (*actio non*); because he says, that he the said John Haselden, a little before the said time when, &c. to wit, on the ninth of April 1787, had lawfully taken and distrained certain goods and chattels which were found and being in a certain room, part and parcel of a certain messuage or dwelling-house situate and being in the parish of Saint Clement Danes, in the said county of Middlesex, which said room, with the appurtenances, one William Good held of the said John Haselden, as his tenant thereof at and under a certain yearly rent for certain arrears of the said rent then due and owing from the said William Good to the said J. H. to wit, for the sum of four pounds and five shillings due and in arrear aforesaid, and part of the same goods and chattels so taken and distrained as aforesaid remained and continued so distrained as aforesaid until and at the said time when, &c. and because the said Orindie, a little before the said time when, &c. had with force and arms feloniously taken and carried away divers large quantities of feathers of great value, to wit, of the value of twenty shillings, part and parcel of the said goods and chattels in the said room as aforesaid, and so distrained as aforesaid, and at the said time when, &c. was taking and carrying away the same from and out of the said messuage or dwelling-house, wherefore he the said J. H. at the said time when, &c. gently laid his hands upon her the said O. and being late at night carried her the said O. to the watchhouse of the parish of Saint C. D. aforesaid, in the said county of Middlesex, to be there lodged, detained, and imprisoned until the morning, in order to be carried and conveyed before one or more of his majesty's justices assigned to keep the peace in and for the said county of Middlesex, and also to hear and determine divers trespasses, felonies, and other misdemeanors committed within the said county, to be there dealt with according to law, and was then and there kept, detained, and imprisoned.

TRESPASS.—PLEA—BY AUTHORITY OF LAW—

prisoned until the morning, the same being a reasonable time for that purpose, and was thereupon carried and conveyed before sir Robert Taylor, knight, and certain other persons unknown to the said J. H. his majesty's justices assigned to keep the peace in and for the said county of Middlesex, and also to hear and determine divers felonies, trespasses, and other misdemeanors committed within the said county, to be examined and interrogated touching and concerning the felony aforesaid, and to be dealt with according to law, as it was lawful for him to do for the cause aforesaid; and the said Orindie was for this reason before the said justices examined and interrogated by the said justices touching and concerning the said felony, and remained under such examination a reasonable time, until the said Orindie was in due course of law discharged and set at liberty, which is the same assaulting the said Orindie in the first Count of the said declaration mentioned, and imprisoning and detaining her as therein mentioned, whereof complained against him the said John Hafelden; and this, &c.; wherefore, &c.: And as to the making the said assault upon the said Orindie, and imprisoning her, and keeping and detaining her in prison, as in the said first Count of the said declaration mentioned, above supposed to have been done by the said J. Hafelden, he the said John Hafelden, by like leave, &c. says, that the said Orindie (*actio non*); because he says, that the said Orindie, a little before the said time when, &c. had, with force and arms, feloniously taken and carried away divers large quantities of feathers of great value, to wit, of the value of twenty shillings of and belonging to the said John Hafelden, and at the said time when, &c. was taking and carrying the same, wherefore the said John, at the said time when, &c. gently laid his hands upon her the said Orindie, and being late at night kept, detained, and imprisoned her until the morning, in order to carry and convey her before one or more of his majesty's justices assigned to keep the peace in and for the said county, and also to hear and determine divers trespasses, felonies, and other misdemeanors committed within the said county, to be there dealt with according to law, and then and there kept, detained, and imprisoned the said O. until the morning, the same being a reasonable time for that purpose, and the said Orindie was thereupon carried and conveyed before sir Robert Taylor, knight, and other persons to the said John Hafelden unknown, his majesty's justices assigned to keep the peace in and for the said county of Middlesex, and also to hear and determine divers felonies, trespasses, and other misdemeanors committed within the said county, to be examined and interrogated touching and concerning the felony last aforesaid, and to be dealt with according to law, as it was lawful for him to do for the cause last aforesaid, and the said O. was thereupon before the said justices by the said justices interrogated and examined touching and concerning the said felony, and remained under such examination a reasonable time, until the said Orindie was in due course of law discharged and set at liberty, which is the same assault the said

ad Plea, that
defendant had
stolen some fea-
thers belonging
to defendant,
wherefore, &c.
(as before.)

Orindie in the first Count of the said declaration mentioned, and imprisoning and detaining her as therein mentioned, whereof the said Orindie hath above complained against him the said John; and this, &c.; wherefore, &c. *Drawn by MR. J. GRAHAM.*

PLEA, 1st; Not Guilty: And for further plea in this behalf as to the said assaulting the said plaintiff in the said first Count of the said declaration mentioned, and imprisoning the said plaintiff, and keeping and detaining him in prison for the said space of time in the said first Count mentioned, above supposed to have been committed by the said defendant, he the said defendant, by leave of, &c. says, (*actio non*); because he saith, that before the said time when, &c. in the said first Count mentioned, to wit, on, &c. some person or persons, to the said plaintiff at that time unknown, had feloniously stolen, taken, and conveyed away from and out of a certain stable of him the said defendant, situate and being at, &c. in, &c. divers, to wit, two horses of him the said defendant of a large value: And the said defendant further says, that he the said defendant, before and at the said time when, &c. had just reason to suspect, and did suspect the said plaintiff to have been concerned in the stealing, taking, and carrying away the said horses of him the said defendant as aforesaid, and for that reason he the said defendant, at the said time when, &c. to wit, on, &c. in the said Count mentioned, at, &c. in, &c. did give charge of the said plaintiff to one A. B. who was then a constable of C. aforesaid, and had then and there full power and authority in that behalf, and did then and there require the said constable to take the said plaintiff into his custody, and to carry him before some one of the justices assigned to keep the peace of our said lord the king in and for the said county of S. and also to hear and determine divers felonies, trespasses, and other misdemeanors committed within the said county, to be dealt with by such justice according to law, and upon that occasion the said A. B. so being such constable as aforesaid, and the said defendant in his aid and assistance did then and there take the said plaintiff into the custody of the said A. B. and did then and there detain him in such custody for the said space of time in the said first Count of the said declaration mentioned, being a reasonable time for that purpose, as it was lawful for them to do for the cause aforesaid, which are the said assaulting of the said plaintiff in the said first Count of the said declaration mentioned, and imprisoning the said plaintiff, and keeping and detaining him in prison for the said space of time in the said Count mentioned, whereof the said plaintiff hath above thereof complained against him the said defendant; and this, &c.; wherefore, &c. if, &c.

Justification to trespass and false imprisonment, that the defendant's horse had been it let out of his stable, and he suspected the plaintiff of being a thief, and charged the constable with him to take him before a justice.

C. RUNNINGTON.

Where a private person arrests another on suspicion of felony, he may deliver him to the constable of the vic,

and that will be a sufficient discharge, 2. Haw. Pl. Co. fol. 21.

And

Justification to
assault and false
imprisonment,
that the defend-
ant took and
detained the
plaintiff by vir-
tue of a warrant
grounded on a
latitat in B. R.

One R. R. sued
out a latitat
against plaintiff.

AND the said defendant, by A. B. his attorney, comes and de-
fends the force and injury when, &c. and says, that he is not guil-
ty of the several trespasses above laid to his charge, in man-
ner and form as the said plaintiff hath above thereof complained against
him; and of this he puts himself upon the country: And for a
further plea in this behalf as to the assaulting, beating, and impris-
oning the said plaintiff in the first Count of the said declaration
mentioned, and keeping and detaining him so imprisoned for the
said space of time in that Count mentioned above supposed to have
been committed by the said defendant, he the said defendant, by
leave of, &c. says (*adlio non*); because he says, that one R. B. be-
fore the said time when, &c. in the said first Count of the said
declaration mentioned, to wit, on, &c. in the twenty-sixth year
of the reign of our lord the now king, sued and prosecuted out of
the court of our said lord the now king before the king himself
(the said court then and still being held at Westminster, in the said
county of Middlesex) a certain writ of our said lord the king call-
ed a latitat against the said plaintiff, directed to the sheriff of Lon-
don; by which said writ reciting, that whereas our said lord the
king had then lately commanded his sheriff of Middlesex that he
should take the said plaintiff and John Doe if they might be found
in his bailiwick, and keep them safely, so that he should have
their bodies before the said lord the king at Westminster at a cer-
tain day then past, to answer to the said R. B. in a plea of tres-
pass, and also to a bill of the said R. B. against the said plaintiff for
twenty-four pounds upon promises, according to the custom of the
court of our said lord the king before the king himself to be exhi-
bited, and that the said sheriff of Middlesex at that day returned to
our said lord the king that the aforesaid plaintiff and John were
not found in his bailiwick, whereupon on behalf of the said R. B.
it was sufficiently attested in the said court of our said lord the
king, before the king himself, that the aforesaid James and John
did run up and down, and secrete themselves in the county of the
said sheriff of London, our said lord the king commanded the
said sheriffs of London that they should take them if they
might be found in their bailiwick, and safely keep them so
that they might have their bodies before our said lord the
king at Westminster on Monday next after the morrow
of All Souls, to answer to the said Richard of the plea and bill
aforesaid, and that the said sheriffs of London should have there
then that writ, which said writ afterwards, and before the deli-
very thereof to the sheriffs of London to be executed as is here-
after mentioned, was duly indorsed for bail for twelve pounds and
upwards, by virtue of an affidavit of the cause of action of the said
Richard in that behalf before them duly made and affirmed of record
in the said court of our said lord the king, before the king him-
self at Westminster aforesaid, according to the form of the statute
in such case made and provided; which said writ so indorsed for
bail as aforesaid afterwards and before the said return thereof, and
also before the said first time when, &c. to wit, on, &c. at, &c.

UNDER LEGAL PROCESS.—(CIVIL—LATITAT.)

in, &c. was delivered to B. W. and J. S. esquires, who then and from thenceforth until and at the said first time when, &c. were sheriffs of London, to be executed in due form of law; by virtue of which said writ the said B. W. and J. S. esquires, so being sheriffs of London as aforesaid, afterwards and before the return of the said writ, and also before the said first time when, &c. to wit, on, &c. at, &c. in, &c. for having execution of the said writ duly made their certain warrant in writing, and then and there directed the same to any of the said sheriffs, serjeants at mace, except A. B. C. D. &c. &c. and by the said warrant then and there commanded all and every the said serjeants at mace to whom the same was so directed as aforesaid, that they, or some or one of them, should take the said James by virtue of the said writ to answer to the said Richard in the plea and to the bill aforesaid, which said warrant was then and there duly marked for bail for twelve pounds and upwards, and which said warrant so marked for bail as aforesaid, afterwards and before the return of the said writ, and also before the said first time when, &c. to wit, on, &c. at, &c. in, &c. was delivered to one S. M. who then and from thenceforth and until and at the said first time when, &c. was one of the said sheriffs, serjeants at mace, to whom the said warrant was so directed as aforesaid, and not excepted therein to be executed in due form of law; by virtue of which said warrant he the said S. M. so being such serjeant at mace as aforesaid, afterwards and before the said first time when, &c. to wit, on, &c. in the said first Count of the said declaration mentioned, within the bailiwick of the said sheriffs of London, to wit, at, &c. in, &c. in execution of the said writ and warrant gently laid his hands on the said James to arrest, and did then and there arrest the said James by virtue of the said writ and warrant, *and kept and detained him in custody at the suit of the said Richard for the cause aforesaid, and for want of bail to the said writ from thence until he the said S. M. afterwards, and before the said return of the said writ, to wit, on, &c. being the said time when, &c. in the said first Count of the said declaration mentioned, at, &c. in, &c. delivered the said James, together with the said warrant into the custody of the said John (he the said John then being and afterwards one of the serjeants at mace of the said sheriffs of London, to whom the said warrant was so directed as aforesaid, and not excepted therein) and then and there charged the said John, so being such serjeant at mace as aforesaid, with the custody of the said James by virtue of the said warrant, and on that occasion he the said John, so being such serjeant at mace as aforesaid, then and there received the said James into his custody, and kept and detained him therein (1) for want of bail (1) and after-* to the said writ for the said space of time in the said first Count of the said declaration mentioned, as he lawfully might for the cause

wards, to wit,
on, &c. at, &c.
in, &c. he the

said S. M. as such serjeant at mace as aforesaid, and the said John in his aid and assistance, and by his command kept and detained the said James in custody by virtue of the said last-mentioned writ and warrant."

aforesaid :

TRESPASS.—UNDER LEGAL PROCESS.

aforesaid : *And the said John in fact further saith, that afterwards and before the return of the said writ, the said warrant was duly returned to the said sheriffs of London executed in form aforesaid, to wit, at, &c. in, &c.* which are the said assaulting, beating, and imprisoning the said James in the said first Count of the said declaration mentioned, and keeping and detaining him imprisoned for the space of time in the said first Count also mentioned, whereof the said James hath above complained against him the said John ; and this, &c. ; wherefore, &c. if, &c. : And for further plea, &c. [Same as the last, only omitting what is in *Italic*, and inserting in lieu thereof what is in the margin.]

Drawn by MR. TIDD.

Plea (to a declaration for breaking, &c. into a house, breaking open desks, &c. seizing goods, making an assault on plaintiff, and imprisoning him) that the defendant was secretary of state, and that one A. B. having accused the plaintiff on oath of high treason, the defendant made out his warrant to apprehend him, and it appearing to the defendant that the plaintiff was guilty, he committed him to the Tower.

S. SAYER, ESQUIRE,
against
EARL OF ROCHEFORD.

before the committing any of the said supposed trespasses, the defendant was one of the lords of the privy council of our lord the king, and one of his majesty's principal secretaries of state, to wit, at, &c. in, &c. : And the said defendant further saith, that one F. R. before the said time when, &c. to wit, on, &c. before and also at the said time when, &c. was an adjutant to the first battalion of the first regiment of foot guards of our said lord the king, and which said battalion on, &c. and before and also at the said time when, &c. was stationed in his majesty's Tower of London ; and the said F. R. so being an adjutant to the aforesaid battalion, and the said battalion so being in the Tower of London as aforesaid, he the said F. R. before the said first time when, &c. to wit, on, &c. at, &c. came in his own proper person before the said defendant, being then and there one of the lords of the privy council, and being one of the principal secretaries of state of our said lord the king, and then and there upon his oath, upon the holy gospel of God then and there by defendant in due form of law administered, did depose, swear, and make information before defendant that he the said F. R. did, on, &c. meet plaintiff, &c. &c. [Set forth the examination of F. R. the purport of which was, that F. R. should deliver the Tower up to the plaintiff, the king was to be seized and imprisoned there, &c. &c.]: And defendant further says, that defendant, upon the said information of the said F. R. afterwards and before the committing any of the said supposed trespasses, to wit, on, &c. at, &c. being then and there one of the principal secretaries of state as aforesaid, did make his certain warrant in writing under the hand and seal of defendant, directed to E. M. and E. S. then and there being two of his majesty's messengers in ordinary, and ministers of defendant in that behalf, by which said warrant the defendant did, in his majesty's name, authorize and require them the said E. M. and E. S. taking a constable to their assistance forthwith, to make strict and diligent search for plaintiff, and him having found, to seize and apprehend for high treason against his majesty, and to bring him with his papers

CRIMINAL—By OFFICER—SECRETARY of STATE.

papers in safe custody before him the defendant to be examined concerning the premises with which he was charged according to the law, in the due execution whereof all mayors, sheriffs, officers, justices of the peace, constables, and all other his majesty's officers both civil and military, and loving subjects whom it might, were to be aiding and assisting to them the said E. M. and E. S. as there should be occasion; which said warrant the said defendant afterwards, and before the committing any of the said supposed trespasses, to wit, on, &c. at, &c. defendant being then and there one of the lords of the privy council, and one of the principal secretaries of state of the said king as aforesaid, did cause to be delivered to the said E. M. and E. S. in the said warrant mentioned, being then and there two of his majesty's messengers as aforesaid to be executed in due form of law: And defendant further says, that afterwards and before the said time when, &c. to wit, on, &c. the said E. M. and E. S. being his majesty's messengers in ordinary as aforesaid, by virtue of the said warrant took to their assistance a certain constable, to wit, one J. W. who was then and there a constable in the parish of, &c. to wit, at, &c.; and the said E. S. and E. M. together with the said constable, afterwards, to wit, at the said time when, &c. entered into the said dwelling-house in order to seize and apprehend plaintiff in his dwelling-house, and the outer door thereof being then and there open, did then and there by virtue of the said warrant seize and apprehend him the said plaintiff in his said dwelling-house, and did then and there also seize, take, and carry away the said goods and chattels in the said declaration mentioned, then being the papers of plaintiff; and because the said papers were then and there contained and locked up in the said cabinet, serutoires, writing desks, boxes, bureaux, trunks, and drawers in the said declaration mentioned, so that the said E. M. and E. S. together with the said constable, did then and there force and break open the said cabinets, &c. for the purpose aforesaid, and the said E. M. and E. S. together with the said constable, did then and there force and break open the said cabinets, &c. and did necessarily on the occasion aforesaid continue in the said dwelling-house for the space of four hours, part of the said time in the said declaration mentioned, and during that time did necessarily and unavoidably make some noise and disturbance therein, and thereby unavoidably disquiet plaintiff in the possession thereof, they the said E. M. and E. S. doing as little damage on that occasion as they possibly could, and the said E. M. and E. S. together with the said constable, so having seized and apprehended plaintiff, and seized his said papers as aforesaid, did with all convenient speed, to wit, on, &c. at, &c. bring plaintiff and his papers in custody before the said defendant, according to the exigency of the said warrant, and that he the said defendant did then and there examine the said plaintiff of and concerning the premises, and thereupon, and upon consideration of the premises, and it appearing to him the said defendant that the plaintiff was guilty of treasonable practices charged upon him by the oath of the said F. R.

TRESPASS.—PLEA—UNDER PROCESS CRIMINAL

before him the said defendant, he the said defendant, so being one of the privy council, and one of his majesty's principal secretaries of state as aforesaid, did thereupon then and there make his certain warrant in writing under his hand and seal, and directed to the right honourable earl Cornwallis, then and there being constable of his majesty's Tower of London, or to the lieutenant of the said Tower, or his deputy, by which warrant he the defendant did, in his majesty's name, authorize and require them to receive into their custody the body of the said plaintiff therewith sent to them, being charged upon oath before him the said defendant, one of his majesty's principal secretaries of state, with treasonable practices, and him to keep in close and safe custody until he should be delivered by due course of law, and defendant did then and there cause the body of the said plaintiff, together with the said last-mentioned warrant to be delivered to C. R. esquire, then and before, and still being deputy lieutenant of his said majesty's Tower of London, to wit, at, &c.; and the said C. R. then and there received the plaintiff into his custody, and kept and detained him in his custody by virtue of the said warrant until the said plaintiff afterwards, to wit, on, &c. was brought before William lord Mansfield, the then lord chief justice of the king assigned to hold pleas in the court of our lord the king before the king himself, by virtue of the writ of our said lord the king of habeas corpus prosecuted by the said plaintiff out of the said court of our said lord the king before the king himself in that behalf, and the said plaintiff was by the said chief justice there delivered to bail for his personal appearance at the next sessions of oyer and terminer and general gaol delivery to be holden at the justice hall in the Old Bailey, and within the suburbs of the city of London, and gaol delivery of Newgate for the county of Middlesex, to answer all such matters and things as should then and there be objected against him on behalf of his said majesty, and so from day to day, and not to depart the court without leave, and thereupon the said plaintiff was discharged out of the custody of the said C. R. to wit, at, &c.; and that the said plaintiff, on the occasion aforesaid, was kept and detained in custody for the space of six days, part of the said time in the said declaration mentioned, which are the same, &c.; and this, &c.; wherefore, &c. [Second plea same as last, justifying the trespass, except breaking open the cabinets. Third plea, justifying the imprisonment for six days.]

Replication to all the pleas, protesting insufficiency and *de injuria sua*, &c.

JOHN GLYNN.

Trinity

Trinity Term, 12. Geo. III.

CLARKE } AND the said George, by A. B. his attorney, comes and defends the force and injury, at the suit of } when, &c. and saith, that he is not guilty of the SALE. } trespass aforesaid in manner and form as the said Peter hath above thereof complained against him; and of this he puts himself upon the country, &c.: And for further plea as to the assaulting the said Peter in the first Count of the said declaration mentioned, and imprisoning him, and keeping and detaining him in prison for the said space of time in the said first Count of the said declaration mentioned, above supposed to have been committed by the said George, he the said George, by leave of, &c. saith (*adlio non*); because he saith, that long before the said time when, &c. to wit, on, &c. some person or persons to the said George unknown had feloniously stolen, taken, and carried away a silver mug of him the said George of a large value, to wit, of the value of five pounds, from and out of the dwelling-house of him the said George, to wit, at Westminster aforesaid: And the said George further saith, that he the said George, before and at the said time when, &c. and long afterwards, to wit, during all the time that the said Peter remained imprisoned as aforesaid, had great reason to suspect, and did suspect the said Peter to have been concerned in the felonious stealing, taking, and carrying away the said silver mug, and the said Peter being, at the said time when, &c. found in the county of Middlesex aforesaid, to wit, at Westminster aforesaid, he the said George did therefore, at the said time when, &c. on, &c. at, &c. take and cause to be taken him the said Peter, and did carry and convey, and caused to be carried and conveyed him the said Peter in custody before one A. B. esquire, then and from thence hitherto and still being one of the justices of our lord the king assigned to keep the peace of our lord the king in and for the said county of Middlesex, and also to hear and determine divers felonies, trespasses, and other misdemeanors committed in the said county to be examined by and before the said justice touching and concerning the said offence, and to be dealt with according to law: And the said George further saith, that the said Peter was then and there, to wit, on, &c. being at the time when, &c. to wit, at, &c. examined by and before the said justice, and on such examination was then and there committed by the said justice to the prison of our lord the king commonly called, &c. to wit, at, &c. for further examination at a future time touching and respecting the aforesaid offence, and on that occasion he the said Peter was necessarily and unavoidably kept and detained in custody for the cause aforesaid for the time aforesaid, until he was discharged for want of due proof of his having been guilty of the said offence, to wit, at, &c. which are the said assaulting the said Peter in the said first Count of the said declaration mentioned, and the imprisoning him, and keeping and detaining him in prison for the said space of time in the said first Count of the said declaration mentioned, whereof the said Peter hath above thereof

Plea in trespass to assault and imprisonment, not guilty, and justification, taking plaintiff before a justice on suspicion of felony.

TRESPASS.—PLEA—BY AUTHORITY OF LAW.

complained against him the said George; and this, &c.; wherefore, &c. if, &c.

J. MORGAN.

Hilary Term, 11. Geo. III.

Plea 1st, not guilty; 2d plea, as to the beating plaintiff, that defendant is the porter of New Inn, and appointed to take care of the gates, and to prevent noise; that plaintiff was making a noise in the night, wherefore defendant charged the watch with him, who kept him some time and then dismissed him.

WILSON } AND the said William, by A. B. his attorney, comes and defends the force and injury
at the suit of }
OXENHAM. } when, &c. and says, that he is not guilty of the trespass and assault above laid to his charge in manner and form as the said Hugh hath above thereof complained against him; and of this he puts himself upon the country, &c.: And the said William, for further plea in this behalf as to the assaulting, beating, and imprisoning the said Hugh in the first Count of the said declaration mentioned, and keeping and detaining him in prison for two hours, part of the said time in the said first Count of the said declaration mentioned above supposed to be done, by leave of, &c. says (*adlio non*); because he says, that a certain building called New Inn, situate in the parish of, &c. consisting of the common dining-hall of New Inn aforesaid, and of divers chambers and apartments at the said first time when, &c. and long before, was an inn of chancery belonging to the Middle Temple, one of the inns of court in which said inn of chancery at the said first time when, &c. and before, there was and yet is a certain society of persons professing and practising the law commonly called the Society of New Inn; and that he the said William, before and at the said time when, &c. was the servant of the society appointed to take care of the gates leading into the said inn in the night time, and to prevent noise and disturbance in the said inn at unreasonable times: And the said William further says, that he the said Hugh not being a member of the said society, at an unreasonable time in the night, to wit, about the hour of one of the clock in the night of the same day and year in the said declaration mentioned, in a very riotous and violent manner, and against the will of the said William, entered the said inn, and then and there made a great noise and disturbance in the said inn, and then and there made an assault upon the said William, so being servant to the said society, in breach of the peace of our lord the king, wherefore the said William then and there gently laid his hands upon the said Hugh, in order that the said Hugh might be carried before one of his majesty's then justices assigned to keep the peace in and for the county of Middlesex, to be there dealt with according to law, and then and there charged one of the watchmen of the parish aforesaid to take the said Hugh into his custody, and to keep him in his custody until he could be carried before one of his majesty's justices of the peace assigned to keep the peace in and for the said county of Middlesex to be dealt with according to law; and thereupon the said watchmen did then and there take the said Hugh into his custody for the purpose aforesaid; and the said Hugh being in custody for the purpose aforesaid afterwards, and during the said

said night, and before the said Hugh was or could be carried before a justice of the peace as aforesaid, was released out of custody with his own consent, and on the occasion aforesaid the said Hugh was detained in custody for the space of two hours, part of the said time in the said first Count of the said declaration mentioned, which are the same assaulting, beating, and imprisoning the said Hugh in the said first Count of the said declaration mentioned, and keeping and detaining the said Hugh in prison for the space of two hours, part of the said time in the said first Count of the said declaration above specified, whereof the said Hugh above complains against the said William; and this, &c.; wherefore, &c. if, &c.: And the said William for further plea in this behalf as to the assaulting, &c. the said Hugh in the said first Count of the said declaration mentioned, and keeping, &c. in prison for the said space of, &c. in the said first Count of, &c. above supposed to be done by leave, &c. says (*ad hoc non*); because he says, that a certain building called New Inn, situate in, &c. consisting of, &c. at the said time when, &c. and long before, was an inn, &c. belonging to, &c.; and that the said William, before and at the said first time when, &c. was the servant of, &c. appointed, &c. and to prevent, &c.: And the said William further saith, that the said Hugh not being a member of the said society, at an unreasonable time of the night, to wit, about the hour of one of the clock of the night of the same day and year in the said declaration mentioned, intruded himself into the said inn, and then and there made a great noise and disturbance therein, whereupon the said William then and there civilly requested the said Hugh to cease making such noise and disturbance there, and to depart from thence, which the said Hugh then and there refused to do, whereupon the said William then and there gently laid his hand on the said Hugh in order to remove him from and out of the said inn; and thereupon the said Hugh then and there made an assault upon him the said William, and him then and there did beat, wound, and ill-treat, in breach of his majesty's peace, wherefore the said William then and there gently laid his hands on the said Hugh, in order that the said Hugh might be carried before, &c. assigned, &c. to be there dealt with according to law, and then and there charged S. M. one of the watchmen of the parish aforesaid, to take the said Hugh into his custody, and keep him in his custody until he could be carried before, &c. to be dealt with according to law, and the said watchman did then and there take the said Hugh into his custody for the purpose aforesaid; and the said Hugh being in custody for the purpose aforesaid afterwards during the said night, and before the said Hugh was or could be carried before a justice of the peace as aforesaid, was released out of custody with his own consent, and on the occasion aforesaid, the said Hugh was detained in custody for, &c. part of, &c. in, &c. which are the same assaulting, in the said first, &c. of, &c. and keeping, &c. the said Hugh in prison for the space of, &c. part of

3d Plea, *meditor manus imposita to preserve peace.*

(a) Porter of an Inn of Court.

4th Plea, *molliter manus impositas* in defence of self.

5th Plea, to tearing clothes. *sen assault demesne* in defence of self.

6th Plea, to the assault only.

&c. whereof the said Hugh above complains against the said William; and this, &c.: And for further plea in this behalf as to assaulting the said William, and beating, &c. in the first Count of &c. and above supposed to be done by the said William, by *leave*, &c. says (*actio non*); because he saith, that the said Hugh, at the said first time when, &c. at, &c. in, &c. upon him the said William did make an assault, and him then and there would have beaten, wounded, and ill-treated, by reason whereof the said William did then and there defend himself against the said Hugh: And the said William further saith, that if any damage or hurt then and there happened to the said Hugh, the same happened for the assault of the said Hugh, and in his the said William's defence of himself against the said Hugh; and this, &c.; wherefore, &c. if, &c.: And the said William for further plea in this behalf as to the assaulting the said Hugh, and beating, &c. and tearing, rending, and spoiling the clothes of the said Hugh, which he the said Hugh then and there had on and was clothed with in the second Count of the said declaration mentioned and above supposed to be done by like leave, &c. (*actio non*); because he says, that the said Hugh, at the said second time when, &c. upon him the said William did make an assault, and him then and there would have beaten, &c. by reason whereof the said William then and there defended himself against the said Hugh: And the said William further saith, that the damage and hurt, if any then and there happened to the said Hugh, the same happened of the assault of the said Hugh, and in his the said William's defence of himself against the said Hugh, and the said William in his own defence from the said assault of the said Hugh did then and there casually and unavoidably some little tear, rend, and spoil the said wearing apparel of the said Hugh with which he was then and there clothed, doing as little damage on that account as he possibly could, which are the same tearing, &c. the wearing apparel of the said Hugh with which he was then and there clothed, whereof the said Hugh hath above complained; and this, &c.; wherefore, &c.: And for further plea in this behalf as to the assaulting the said Hugh, and beating, &c. in the last Count of the said declaration mentioned and above supposed to be done, he the said William, by like leave, &c. (*actio non*); because he says, that the said Hugh, at the said last time when, &c. upon the said William did make an assault, and him would have beaten, &c. by reason whereof the said William did then and there defend himself against the said Hugh, and the said William saith, that the damage and hurt, if any then and there happened to the said Hugh, the same happened of the assault of the said Hugh, and in his the said William's defence of himself against the said Hugh; and thus, &c.; wherefore, &c. if, &c.

W. BALDWIN.

Repetition, *de injuria, &c.* and issue on all the pleas.

OXENHAM
again?
WILSON.

And the said Hugh, as to the said plea of the said William by him first above pleaded in bar, and whereof the said William hath put himself upon the country, he the said Hugh doth the like, &c.: And as to the said plea

plea of the said William by him secondly above pleaded in bar as to the assaulting, beating, and imprisoning him the said Hugh in the first Count of the said declaration mentioned, and keeping and detaining him in prison for the space of two hours, part of the said time in the said first Count of the said declaration mentioned above done by the said William, the said Hugh saith, that he by any thing in that plea contained ought not to be barred from having and maintaining his aforesaid action thereof against him the said William; because he saith, that true it is that the said building called New Inn in the said plea mentioned, at the said first time when, &c. and long before, was an inn of chancery belonging to the Middle Temple, one of the inns of court in which said inn of chancery at the said first time when, &c. and before, there was and yet is a society of persons professing and practising the law, commonly called the Society of New Inn; and that he the said William, before and at the time when, &c. was the servant of the said society appointed to take care of the gates leading into the said inn in the night-time, and to prevent noise and disturbance in the said inn at unreasonable times, in manner and form as the said William hath above in his said plea in that behalf alleged; but the said Hugh further saith, that the said William, at the said time when, &c. to wit, at, &c. of his own wrong, and without the residue of the cause in the said plea mentioned, made an assault on the said Hugh, and beat and imprisoned him, and kept and detained him in prison for the said space of two hours, part of the said time in the said first Count of the said declaration mentioned, in manner and form as the said Hugh hath above thereof complained against him the said William; and this he the said Hugh prays may be enquired of by the country; and the said William doth the like, &c.: And as to the said plea of the said William by him thirdly above pleaded in bar as to the assaulting, beating, and imprisoning the said Hugh in the said first Count of the said declaration mentioned, and keeping, &c. for the space of, &c. above done by the said William, the said Hugh saith, that he by any thing in that plea contained ought not to be barred from having and maintaining his aforesaid action thereof against him the said William; because he saith, that true it is that the said building called, &c. in the said plea mentioned, at the said first time when, &c. and long before, was an inn of chancery belonging to the Middle Temple, one of the inns of courts in which said inn of chancery at the said first time when, &c. and before, there was and yet is a society of, &c. professing, &c. and that he the said William, before and at the time when, &c. was the servant of, &c. appointed to, &c. and to prevent, &c. in manner and form as the said William hath above in his said plea in that behalf alleged; but the said Hugh further saith, that the said William, at the said time when, &c. to wit, at, &c. of his own wrong, and without the residue of the cause in the said plea mentioned, made an assault on him the said Hugh, and beat and imprisoned him, and kept, &c. for the said space of, &c. in the said first Count of, &c.

To 4th Plea.

in manner and form as the said William hath above in his said plea above thereof complained against him the said William; and this he the said Hugh prays, &c. : And as to the said plea of the said William by him fourthly above pleaded in bar, as to the assaulting the said Hugh, and beating, bruising, wounding, and ill treating him in the first Count of, &c. and above done by the said William, the said Hugh saith, that he by any thing in that plea contained ought not to be barred from having and maintaining his aforesaid action thereof against the said William; because he saith, that the said William, at the said time when, &c. to wit, at, &c. of his own wrong, and without any such cause as is by the said William in his said plea in that behalf alledged, made an assault on him the said Hugh, and beat, &c. in manner and form as the said Hugh hath above thereof complained against him the said William; and this he the said Hugh prays, &c. : And as to the said plea of the said William by him fifthly above pleaded in bar, as to the assaulting the said Hugh, and beating, &c. and tearing, rending, and spoiling the clothes of the said Hugh, which he the said Hugh then and there had on and was clothed with in the second Count of the said declaration mentioned above done by the said William, the said Hugh saith, that he by any thing in that plea contained ought not to be barred from having and maintaining his aforesaid action thereof against the said William; because he the said William, at the said time when, &c. to wit, at, &c. of his own wrong, and without any such cause as is by the said William in his said plea in that behalf alledged, made an assault on the said Hugh, and beat, &c. and tore, &c. in the first Count of, &c. in manner and form as the said Hugh hath above thereof complained against the said William; and this he the said Hugh prays, &c. : And as to the said plea of the said William by him lastly above pleaded in bar, as to the assaulting the said Hugh, and beating, &c. in the last Count of the said declaration mentioned, and above done by the said William, the said Hugh saith, that he by any thing in that plea contained ought not, &c. because he saith, that he the said William of his own wrong, and without any such cause as is by the said William in his said plea in that behalf alledged, made an assault on him the said Hugh, and beat, &c. in manner, &c.; and this he the said Hugh prays, &c.; and the said William doth the like, &c.

J. MORGAN.

Plea (to assault and imprisonment), that the defendant was possessed of a house, and that plaintiff in the night time was making a noise at the door, wherefore the

GENERAL ISSUE: And for further plea in this behalf, as to the making the said assault upon the said plaintiff, and beating and ill-treating him, and imprisoning and keeping and detaining him in prison for the said space of time in the said first Count of the said declaration mentioned, above supposed to have been committed by the said defendant, by leave, &c. (*actio non*); because he says, that the said defendant long before, and at the said time when, &c. was lawfully possessed of and in a certain dwelling-house,

house,

house, with the appurtenances, situate and being in a certain public street called Charlotte-street, in the parish of St. Pancras, in the county of Middlesex; and being so thereof possessed he the said plaintiff a little before the said time when, &c. to wit, on the same day and year in the first Count of the said declaration mentioned, in the night time of that day, with force and arms came to the door of that house, and then and there with great force and arms and violence knocked at the door of the said house of the said defendant; and the said plaintiff then and there having no lawful occasion to go into the said house, and no lawful occasion to speak and converse with any person then in the said house, and having no right to demand entrance into the said house, then and there made a great noise, riot, and disturbance before and at the door of the said house of the said defendant, to the great annoyance and disturbance of the said defendant and his family, and against the peace of our lord the now king, and thereupon the said defendant then and there, at the said time when, &c. (he the said plaintiff to then and there remaining and continuing before the said door of the said house of the said defendant, and making such noise, riot, and disturbance, and so being there in breach of the said peace) charged Samuel Oliver, he the said Samuel Oliver being then and there duly assigned to keep watch there during that night, to take the care and custody of the said plaintiff, in order to carry him before some one of his majesty's justices of the peace, assigned to keep the peace of our said lord the king in and for the county of Middlesex, and also to hear, &c. and other misdemeanors committed within the said county, to be by such justice dealt with according to law; and thereupon the said Samuel Oliver, so being assigned to keep the watch as aforesaid, then and there took charge of the said plaintiff, and then and there took, carried, and conducted the said plaintiff in custody before A. B. esquire, then and there being one of his majesty's justices aforesaid, assigned to keep the peace, &c. and to hear, &c. to be examined touching and concerning his said offence and breach of the king's peace, and on that occasion the said plaintiff remained so imprisoned for a short space of time, to wit, for the space of three hours, and until the said plaintiff afterwards, to wit, on the same, &c. was by due course of law discharged, which are the same, &c.; and this, &c.; wherefore, &c.

F. BULLER.

I have drawn a justification in this case, but it seems to me to admit of some doubt whether a private person, as the defendant is, can justify an imprisonment for a riot or affray?

Another justification was afterwards thought necessary, stating plaintiff was making a riot in Charlotte street, and not before the door of defendant's house, [as follows:]

And for further plea, as to the making, &c. by like leave, &c. (*actio non*); because he says, that the said plaintiff a little before the said time when, &c. to wit, on the same, &c. in the said first Count

Count

TRESPASS. PLEA—JUSTIFICATION BY

Count of the said declaration mentioned, in the night time of that day, at a late hour of that night, between the hours of eleven and twelve of the clock, made a great riot, noise, and disturbance in the said street called Charlotte-street, to wit, at Westminster aforesaid, to the great annoyance and disturbance of the said defendant and his neighbours there, and against the peace of our said sovereign lord the new king, he the said defendant being present and seeing the same, he the said plaintiff then and there continuing and remaining in the said street called Charlotte-street, and making such riot, noise, and disturbance, and so being there in breach of the said peace, charged Samuel Oliver. [Same as second plea from hence to the end.] F. BULLER.

This cause was tried sittings after Trinity Term 1774, before De Grey, Chief Justice, said defendant did right to justify. Chief Justice, and verdict for defendant.

Easter Term, 27. Geo. III.

MOSTYN

against

FENWICKE AND OTHERS.

} DECLARATION for entering dwelling-house, and making a noise therein, &c.

Pls. 1st,

General Issue: And for further plea in this behalf as to the breaking and entering the said messuage or dwelling-house in the said first Count of the said declaration mentioned, and making a noise and disturbance therein, and continuing therein for the space of half an hour, part of the said time in the said first Count of the said declaration mentioned, and breaking and entering the said rooms and apartments in the said messuage or dwelling-house, and making a little noise and disturbance therein, and continuing therein for the space of half an hour, part of the said time in the said first Count of the said declaration mentioned, by them supposed to have been done, they the said defendants, by leave, &c. (*actio non*); because they say, that the city of London now is, and at the said time when, &c. in the said first Count of the said declaration mentioned was an ancient city of this kingdom, and that the ward of Broad-street aforesaid is, and at the said time when, &c. was an ancient ward; and that within the ward aforesaid there now is, and from time immemorial hath been a certain court of our said lord the now king and his predecessors, called the Wardmote, held and to be held every year upon the feast of St. Thomas the Apostle, unless the feast be upon a Sunday, and in that case upon the day next following the said feast before the alderman of the said ward for the time being, or his deputy within the said ward, in which said court, according to the custom thereof within the said ward for all the time aforesaid used and approved, all the men inhabiting and resident, paying scot and bearing lot for the time being in the said ward, have been used and accustomed, and ought, and were bound by reason of their residence

London an ancient city.

The ward of Broad-street an ancient ward. A court of wardmote held within the ward.

residence there, to appear in the said court and do their suit there,
 and in the said court, according to the custom thereof yearly, the
 said men inhabiting and resiant, paying scot and bearing lot, and
 so many of them as should appear at the said court as aforesaid,
 have during all the time aforesaid been used and accustomed, and
 still of right ought to chuse and appoint divers, to wit, persons ^{Inquest then}
 then inhabiting the said ward and paying scot and bearing lot with- ^{appointed,}
 in the said ward, to be an inquest in and for the said ward for and
 during the space of one year then next ensuing for the enquiring ^{for the enquiry}
 and presenting if any person within the said ward kept any bawdy- ^{if any person}
 house, or any other house of ill fame; and for that purpose the said ^{kept a house of}
 inquest, during all the time aforesaid, have been used and accus- ^{ill fame.}
 tomed, and still of right ought to enter into any messuage or
 dwelling-house, and the rooms thereof, within the said ward, at
 seasonable and convenient times, and upon reasonable cause of sus-
 picion, and there to enquire and search whether such messuage or
 dwelling-house was a bawdy-house, or house of ill fame, according
 to the duty of their aforesaid office: And the said defendants further ^{Defendants ap-}
 say, that a certain court of wardmote, holden on the twenty-first ^{pointed.}
 day of December now last past, the same being the feast of St.
 Thomas the Apostle now last past, before A. B. esquire, then and
 still being an alderman of the said ward within the said ward, cer-
 tain then inhabitants and resiants, bearing lot and paying scot for
 the time being in the said ward appearing in the said court, did
 chuse and appoint the said defendants and ^{being persons then}
 inhabiting the said ward and paying scot and bearing lot within the
 said ward, to be an inquest for the said ward for and during the
 year then next ensuing for the enquiring of and presenting if any
 person within the said ward kept any bawdy-house, or any other
 house of ill fame as aforesaid: And the said defendants further say, ^{Had cause to}
 that the said inquest, having taken upon themselves the said office, ^{suspect that the}
 they the said defendants being part of such inquest as aforesaid, a ^{plaintiff kept a}
 little before and at the said time when, &c. had reasonable cause ^{bawdy-house;}
 to suspect that the said messuage or dwelling-house of the said
 plaintiff was a bawdy-house, or house of ill fame; and thereupon,
 as part of such inquest as aforesaid, at the said time when, &c. the
 same being a seasonable and convenient time for that purpose,
 entered with one C. D. a constable of the parish aforesaid, for the ^{wherefore they}
 preservation of the peace of our said lord the king, into the said ^{entered to}
 messuage or dwelling-house in the said first Count of the said decla- ^{search.}
 ration mentioned, the same being within the said ward and the
 rooms thereof, to enquire and search whether such messuage or
 dwelling-house was a bawdy-house, or house of ill fame, accord-
 ing to the duty of their aforesaid office, as it was lawful for them
 to do for the cause aforesaid, and in so doing necessarily and una-
 voidably made a little noise and disturbance in the said messuage or
 dwelling-house and rooms in the said first Count mentioned, and
 continued therein for the space of half an hour, part of the said
 time in the said first Count of the said declaration mentioned, as
 it

48 TRESPASS.—PLEA.—JUSTIFICATION BY AUTHORITY—

it was lawful for them to do for the cause aforesaid; which are the same, &c. whereof, &c.; and thus, &c.; wherefore, &c.

GEORGE BOND.

Plea (to declaration for an assault and imprisonment, and carrying plaintiff from A. to B.), that D. J. and W. G. are two justices of the peace for the borough of K. and that they made their warrant, directed to the constable of the said borough and the keeper of the house of correction, reciting, that plaintiff had been brought before them to be examined respecting his legal settlement, and had refused to answer questions, wherefore they commanded the constables to take him into custody, and deliver him to the keeper of the house of correction, who was ordered to receive him, the warrant delivered to W. M. who arrested plaintiff, and delivered him to the defendant who is the keeper of the house of correction. *molitor manus, &c.*

FIRST, General Issue: And for further plea in this behalf as to the assaulting, beating, and ill-treating the said John in the first Count of the said declaration mentioned, and imprisoning, and and keeping and detaining him in prison for the space of thirteen days, part of the said time in the said first Count of the said declaration mentioned, above supposed to have been committed by the said M. K. (one of the defendants) he the said M. K. by leave, &c. (*ad hoc non*); because he says, that long before, and at and after the said time when, &c. one D. J. esquire, and one W. G. esquire, were two of the justices of our said lord the king, assigned to keep the peace of our said lord the king in and for the borough of K. in the said county of W. and also to hear and determine divers trespasses, felonies, and other misdeeds, done and committed within the said borough, to wit, at K. aforesaid, and that the said D. J. and W. G. afterwards, and before the committing the said supposed trespasses in the said first Count of the said declaration mentioned, to wit, on, &c. in the borough of K. in W. aforesaid, duly made their warrant in writing, under their hands and seals, directed to the constables of the said borough and each of them, and to the keeper of the house of correction in the said borough, reciting, “that the said plaintiff had been brought before them the said D. J. mayor, and W. G. one of the two senior aldermen of the said borough, and one of the quorum, to be examined as to his legal settlement, and that he the said plaintiff had refused to answer such questions put by them to him to their satisfaction, they the said justices therefore, by the said warrant, commanded them the said constables and every of them to take into their custody the body of the said plaintiff, and him to deliver to the keeper of the house of correction, and they thereby commanded him the said keeper to receive into his custody in the said house of correction the body of the said plaintiff, and him there safely keep until he should give unto them satisfactory answers, and therein not to fail at their peril;” which said warrant afterwards, and before the said time when, &c. to wit, on, &c. at, &c. in, &c. was delivered to W. M. then being one of the constables of the said borough, to be executed according to law; by virtue whereof the said W. M. afterwards, to wit, on, &c. at, &c. in, &c. took and arrested the said plaintiff, and forthwith carried the said plaintiff and delivered him into the custody of the said M. K. in the said house of correction in the said borough, he the said M. K. then and still being keeper of the said house of correction in the said borough; and thereupon the said M. K. being such keeper of the said house of correction as aforesaid, did then and there gently lay his hands on and upon the said plaintiff to take, and did then and there take the said plaintiff into the custody of the said defendant in the said house of correction.

correction for the space of thirteen days, part of the said time in the said first Count of the said declaration mentioned, until the said plaintiff was discharged by the said justices from the custody of the said M. K. according to the exigency of the said warrant, as he lawfully might for the cause aforesaid, he the said plaintiff during that time not having given any satisfactory answers to the said justices, or either of them, to the said questions put by them to the said plaintiff upon his examination *inter alia* which are the name, &c. whereof, &c.; and this, &c.; wherefore, &c.

A. CHAMBERLAIN.

And the said plaintiff, as to the said plea of the said M. K. by him secondly above pleaded in bar as to the said assaulting, &c. above done by the said M. K. says (*precludi non*); because that he the said plaintiff exhibited his bill and brought his action against the said M. K. as well for the said trespass, assault, and false imprisonment, confessed and acknowledged by the said plea of the said M. K. as for that the said M. K. on, &c. in, &c. with force and arms imprisoned the said plaintiff on another occasion, and for another purpose, and in a different manner than on the occasion, and for the purpose, and in manner in that plea mentioned, and then on there kept and detained the said plaintiff in a certain dark, damp, and unwholesome cell, and detained him therein for the said space of time in the said first Count of the said declaration mentioned; which said imprisonment and keeping and detaining him in prison herein above newly assigned is another and different imprisonment and detaining in prison in the said plea of the said M. K. attempted to be justified; and this, &c.; wherefore, &c.: And the said John, as to the said plea of the said M. K. secondly above pleaded in bar as to the assaulting, &c. (*precludi non*); because he says, that the said M. K. at the said time when, &c. of his own wrong, and without the cause by him above in that plea alleged, assaulted, &c. the said plaintiff, and imprisoned, and kept and detained him in prison for the said time in the said first Count of the said declaration mentioned, in manner and form as the said plaintiff hath above in the first Count of the said declaration mentioned complained against; and this he prays may be enquired of by the country, &c.

W. BALDWIN.

General issue, *non culp.* to new assignment.

AND the said W. H. and T. K. by M. W. their attorney, come and defend the force and injury, when, &c. and say they are not guilty of the trespasses above laid to their charge, in manner and form as the the said T. V. and J. G. have above thereof complained against them; and of this they put themselves upon the country: And for further plea as to the said supposed trespasses in the said declaration mentioned, above supposed to have been committed by the said W. H. and T. K. they the said W. H. and

(a) Replication and New Assignment.

T. K.

TRESPASS.—PLEA BY OFFICERS OF EXCISE.

By officers of ex-
cise, and tender
of amends.

Months notice
to the officers.

T. K. by leave of the court for that purpose first had and obtained, according to the form of the statute in such case made and provided, say, that the said T. V. and J. G. ought not to have or maintain their aforesaid action thereof against them; because they say, that they the said W. H. and T. K. long before, and at the said time when those trespasses are above supposed to have been done, and at the same time when, &c. were, and still are officers of excise, to wit, at the parish of Saint Olive, in the borough of Southwark aforesaid, in the county aforesaid; and being such officers of excise as aforesaid, the said supposed trespasses above-mentioned were done by them the said W. H. and T. K. by reason of their office as such officers of excise as aforesaid, to wit, at the parish of St. Olive, in the borough of Southwark aforesaid, in the county aforesaid: And the said W. H. and T. K. further say, that one D. Burges, of Vine-street, in the city of Bristol, by George Edmunds, attorney for the said T. V. and J. G. after the said time when, &c. to wit, on the twenty-seventh day of December 1785, to wit, at the parish of Saint Olive, in Southwark aforesaid, did give and deliver to each of them the said W. H. and T. K. notice in writing, bearing date the same day and year last aforesaid, that the same T. V. and J. G. intended after the expiration of one calendar month next after the delivery thereof to commence an action in his majesty's court of common pleas at Westminster against them the said W. H. and T. K. at the suit of the said T. V. and J. G. for the supposed trespasses in the said declaration mentioned: And the said W. H. and T. K. further say, that afterwards, and within one calendar month after the said notice had been given, and before the suing out the original writ of the said T. V. and J. G. to wit, on the said twenty-eighth day of January 1726, at the parish aforesaid, in the borough and county aforesaid, they the said W. H. and T. K. according to the statute in such case made and provided, tendered and offered to pay to the said T. V. and J. G. the sum of two hundred pounds as amends for the said supposed trespasses, the same then and there being a sufficient amends for the same; and also then and there tendered and offered to pay to the said T. V. and J. G. the further sum of three pounds for the preparing and serving such notice as aforesaid; which said two sums of two hundred pounds and three pounds the said T. V. and J. G. then and there refused to accept and receive from the said W. H. and T. K. to wit, at the parish aforesaid, in the county aforesaid; and this they are ready to verify; wherefore they pray judgment if the said T. V. and J. G. ought to have or maintain their aforesaid action thereof against them, &c.

NASH GROSE.

Replication si-
milar, and not
sufficient
amends.

And the said T. V. and J. G. as to the said plea of the said W. H. and T. K. by them first above pleaded in bar, and whereof the said W. H. and T. K. have above put themselves upon the country, they the said T. V. and J. G. do so likewise: And as to the said plea of the said W. H. and T. K. by them secondly above pleaded in bar to the said trespasses in the said declaration mentioned, say,

TENDER OF AMENDS, AND RÉPLICATION.

say, that they the said T. V. and J. G. by reason of any thing in the said plea by the said W. H. and T. K. secondly above pleaded in bar alledged, ought not to be barred from having and maintaining their aforesaid action thereof against them the said W. H. and T. K.; because they say the said sum of two hundred pounds in the said plea by them secondly above pleaded in bar mentioned so tendered and offered by the said W. H. and T. K. to them the said T. V. and J. G. as and for amends for the said several trespasses in the said declaration mentioned, were not nor are a sufficient amends for the same trespasses, as they the said W. H. and T. K. have above in their said plea by them secondly pleaded in bar alledged; and this they the said T. V. and J. G. pray may be enquired of by the country, &c.

UNDER CIVIL PROCESS.

HINDES } FIRST, Not Guilty: And for further plea as to the Plea (to a decla-
at suit of } assaulting, &c. of the said plaintiff (*ad id non*); because tation in tref-
KANE. } he says, that he the said defendant in Trinity Term, in past, for assault-
the twenty-seventh year of, &c. in the court of our lord the king, ing and im-
before the king himself (the said court then and still being held at prisoning plai-
Westminster in the county of Middlesex), by the consideration of the said defendant having
and judgment of the said court recovered against the said plaintiff as sentant judge-
well a certain debt of thirty-six pounds, as also sixty-three shillings for ment in a suit
his damages which he had sustained as well by occasion of the de- against plaintiff,
taining of that debt as for his costs and charges by him about his sued out *capias*.
suit in that behalf expended, whereof the said plaintiff was con- *satisfaciendum*,
victed, as by the record and proceedings thereof remaining in the upon which
said court appears, which said judgment remains in its full force, plaintiff was ar-
not reversed, annulled, set aside, paid off, or satisfied; and the rested, which is
said debt and damages, or any part thereof, not being paid or satis- the said suppos-
fied to the said defendant, and the said judgment being in full force ed assault, &c.
he the said defendant on, &c. in the twenty-seventh, &c. for ob-
taining the said debt and damages, sued out of the said court of our
said lord the king, before the king himself, a certain writ of our
said lord the king called a *capias satisfaciendum* directed to the then
sheriff of Middlesex, by which said writ our said lord the king
commanded the said sheriff that he should take the said plaintiff if
he should be found in his bailiwick, and him safely keep, so that
he might have his body before our said lord the king at Westmi-
nster on, &c. to satisfy the said defendant his debt and damages
aforesaid, in form aforesaid recovered, and that he should have
there that writ, which said writ afterwards, and before the return
thereof, to wit, on, &c. at, &c. was delivered to A. B. and
C. D. esquire, then and there being sheriff of the said county
of Middlesex, to be executed in due form of law; by virtue of
which

which said writ the said sheriff of the said county of Middlesex afterwards, and before the return of the said writ, and also before the said time when, &c. to wit, on, &c. at, &c. duly made out his warrant in writing, sealed with the seal of his said office of sheriff, directed to O. P. Q. R. &c. &c. then and there until, and at and after the said time when, &c. being bailiffs of the said then sheriff of the said county of Middlesex, and by the said warrant the said sheriff then and there commanded the said bailiffs that they or some or one of them should take the said plaintiff if he should be found in his the said sheriff's bailiwick, and him the said plaintiff safely keep so that the said then sheriff might have his the said plaintiff's body before our said lord the king at Westminster, on, &c. in the said writ mentioned, to satisfy the said defendant his said debt and damages so by him recovered as aforesaid; which said warrant he the said defendant afterwards, and before the return of the said writ, and before the said time when, &c. to wit, on, &c. at, &c. delivered to O. P. one of the said bailiffs to whom the said warrant was so directed as aforesaid to be executed in due form of law; by virtue of which said warrant he the said O. P. so then and there being such bailiff as aforesaid, afterwards, and before the return of the said writ, to wit, at the said time when, &c. in the said declaration mentioned, to wit, at, &c. gently laid his hands upon the said plaintiff in order to take and arrest, and did then and there accordingly arrest and take him the said plaintiff under and by virtue of the said warrant, and imprison him, and keep and detain him so there imprisoned and in custody under such warrant and arrest for the said time in the said declaration mentioned, as he lawfully might do for the cause aforesaid; which is the said trespass in the introductory part of this plea mentioned, and whereof the said plaintiff hath above complained against him the said defendant; and of this, &c.; wherefore, &c. if, &c.

V. LAWEs.

AND for further plea in this behalf, as to the breaking, &c. in the second Count of the said declaration mentioned, and as to breaking, &c. and as to, &c. he the said defendant, by leave, &c. says, &c. (*ratio non*); because he says, that the said dwelling-house in the said second Count mentioned, and the, &c. and the, &c. are one and the same dwelling-house, and not divers or different, and that the said breaking, &c. in the, &c. and the said breaking, &c. in the, &c. are the same breaking, &c. and not divers or different, and that one C. C. before the said time when, &c. to wit, on, &c. in the twenty-eighth year of the reign of, &c. sued and prosecuted out of the court of our lord the king of the bench, a certain writ of our said lord the king, called a *capias respondendum*, directed to the then sheriff of Surry, by which said writ our said lord the king commanded the said then sheriff that he should take the said plaintiff [recite the writ]; which said writ afterwards, and before the delivery thereof to the said then sheriff,

Plea, that a *capias respondendum* issued out of the C. B. directed to the sheriff of Surry, that the sheriff made out his warrant to the defendant as his bailiff, and therefore he entered, &c.

was

was duly indorfed for bail for twenty-seven pounds and upwards, by virtue of an affidavit of the cause of action before then duly made and filed according to the form of the statute in such case made and provided; which said writ being so indorfed for bail as aforesaid, afterwards, and before the return thereof, and also before the said time when, &c. to wit, on, &c. at, &c. was delivered to R. L. esquire, then and there being sheriff of the said county of Surry, to be executed in due form of law; by virtue of which said writ he the said R. L. so being sheriff of the said county of Surry as aforesaid, afterwards, and before the return thereof, and also before the said time when, &c. to wit, on, &c. at, &c. for having an execution of the said writ, duly made out and granted his warrant in writing, sealed with his seal of office, directed to the keeper of the gaol of the said county of Surry, and also the said defendants J. R. T. W. &c. &c. his then bailiffs, thereby commanding them and every of them, jointly and severally, that they should take or that one of them should take the said plaintiff if he should be found in his the said sheriff's bailiwick, and him safely keep, so that he the said sheriff might have his body before the justices of our sovereign lord the king at Westminster, in three weeks of the Holy Trinity, to answer the said C. C. in the several pleas aforesaid; which said warrant was then and there also indorfed for bail for twenty-seven pounds and upwards, and being so indorfed was afterwards, and before the return of the said writ, and also before the said time when, &c. to wit, on, &c. at, &c. delivered to him the said defendant, he the said defendant being one of the bailiffs of the said sheriff in the said writ mentioned, and so continuing from thence until, and at, and after the said time when, &c. to be executed in due form of law; by virtue of which said warrant he the said plaintiff afterwards, and before the return of the said writ, to wit, at the said time when, &c. entered the said dwelling-house in the said second, fourth, and last Counts of the said declaration mentioned, the outer door thereof being then and there open, in order to arrest and take the said plaintiff into custody by virtue of the said warrant, as he lawfully might do for the cause aforesaid, and in so doing, and in searching the said house for the purpose of finding him the said plaintiff, necessarily staid and continued in the said house for the said time in the said fourth Count mentioned, and unavoidably made a little noise and disturbance in the said dwelling-house, and thereby a little disturbed and disquieted the said plaintiff and his family in the peaceable and quiet use, occupation, and enjoyment of the same, which are the same trespass in the introductory part of this plea mentioned, whereof the said plaintiff hath above complained against him the said defendant; and this, &c.

V. LAWES.

Replication to a plea in trespass, that he seized under a commission of bankruptcy issued against plaintiff, admits issuing of commission, and that such proceedings as in plea mentioned were had thereon, and the making of indenture mentioned in plea. For replication that commission was superseded, and as to residue of cause in plea mentioned, *de injuria, &c.*

PRATT } And the said Jeremy as to the said plea of the said
against } **APsley** by him secondly above pleaded in bar as to
PELLATT. the taking and carrying away the goods and chattels of the said plaintiff in the first Count of the said declaration mentioned, and also as to the taking and carrying away the goods and chattels in the last Count of the said declaration mentioned by the said defendant above done, the said J. says, that he by any thing in that plea contained ought not to be barred from having his aforesaid action thereof maintained against the said defendant, because he the said plaintiff says, that true it is that such commission as is in the said plea of the said defendant mentioned issued out of the said high court of chancery against the said plaintiff, and that such proceedings were had under the said commission as is in the said plea in that behalf mentioned in manner and form as the said defendant hath in his said plea in that behalf alledged; nevertheless for replication in this behalf the said plaintiff saith, that the said commission afterwards, to wit, on, &c. in the thirteenth year of the reign of, &c. by virtue of the writ of superedeas of our lord the now king, duly issuing out of the said high court of chancery the day and year last aforesaid, and directed to the commissioners in the said commission named (which said writ the said Jeremy now brings into court here duly sealed, the date whereof is the day and year last aforesaid) was duly superseded (to wit, for that the said plaintiff had not before the date and suing forth of the said commission committed any act of bankruptcy): And the said plaintiff further saith, that the said defendant at the said time when, &c. of his own wrong, and without the residue of the cause in his plea in that behalf mentioned, took and carried away the goods and chattels of the said plaintiff in the first Count of the said declaration mentioned, to wit, at, &c. in manner and form as the said plaintiff hath above thereof complained against him the said Apsey; and this, &c.; wherefore soasmuch as the said A. hath above acknowledged the trespass aforesaid, he the said J. prays judgment and his damages, by him sustained on occasion of the committing the trespass aforesaid, to be adjudged to him, &c.

J. MORGAN.

Demurrer to the last replication.

PELLATT } And the said A. as to the said plea of the said J.
at the suit of } by him above pleaded in reply to the said plea of
PRATT. the said A. by him secondly above pleaded in bar, says, that that plea and the matters therein contained are not sufficient in law to enable him the said J. to have or maintain his said action thereof against him the said A. to which said plea in manner and form as the same is above pleaded by way of reply the said A. is under no necessity nor is he bound by the law of the land in any manner to answer, and this he the said A. is ready to verify; wherefore for want of a sufficient plea in this behalf the said A. as before prays judgment, and that the said J. may be barred from having and maintaining his said action thereof against him, &c. and for causes of demurrer in law in this behalf, the

said

said A. according to the form of the statute in such case made and provided, shews to the court here these causes following, that is to say, that the said J. hath by that plea attempted to put in issue matter that is immaterial and not issuable, and on which no proper issue can be joined, and for that the said J. ought to have concluded the said plea to the country and not with an averment, and for that the said plea in other respects is uncertain, &c.

F. BULLER.

PRATT } And the said J. saith, that the said plea of the said Joinder in
at suit of } J. by him above pleaded in reply to the said plea of murrer.
PELLATT. } the said A. by him secondly above pleaded in bar
and the matters therein contained are sufficient in law to enable
him the said J. to have and maintain his said action thereof against
the said A. which said plea and the matters therein contained he
the said J. is ready to verify and prove as the court shall award,
and because the said A. hath not answered the said plea nor in any
manner denied the same, the said J. as before prays judgment
and his damages, by occasion of the trespass aforesaid to be ad-
judged him, &c. but because the court of our lord the king now
here is not advised what judgment to give of and upon the pre-
mises, a day is therefore given to the parties aforesaid to come
before our lord the king at Westminster until to hear judg-
ment of and upon the premises aforesaid, for the court of our lord
the king now here is not yet advised thereof, &c.

cur. adv. vult.

MODERATE CORRECTION.

27th Geo. III.

BENTICK } PLEA, 1st, Not Guilty to the whole declaration: Plea (to trespass
at suit of } And for further plea as to, &c. &c. (*actio non*); for imprisoning
MILLS. } because he saith, that before and at the said time and flogging
when the said trespass is above supposed to have been committed, plaintiff and
and afterwards he the said defendant was captain of a certain ship putting him
of war of our lord the now king called the Assistance, and as defendant is
such captain of the said ship had the inspection and management captain of a
of the said ship, and the government, direction, and superintendence king's ship of
of all the mariners and seamen of and belonging to and on board war, and that
the same, to wit, at, &c.; and that before and at the said time plaintiff was
when, &c. the said plaintiff was a mariner of and on board the one of the sal-
same ship, and that just before the same time when, &c. to wit, lars, and be-
on, &c. in the said declaration mentioned, that is to say, at, &c. cause he dis-
aforesaid, the said plaintiff did in no wise behave and demean him- obeyed orders
self and discharge his duty as a good, faithful, and obedient ma- defendant caus-
riner of the said ship, but on the contrary thereof did unfaithfully, ed him to be
disobediently; and undutifully behave himself, and did then and flogged and to
be put in irons.

(1) "with intent there quit, leave, and depart from on board the said ship (1) and was then and without the leave of the said defendant or any other officer on there about to board the said ship, and contrary to certain lawful orders just go on board a board the said ship, before then given by him the said defendant as such captain of certain hulk or the said ship as afore said in and on board the said ship, whereupon vessel lying near he the said defendant, as such captain of the ship as afore said, and to the said ship having the direction, government, care, and management of the whereof the said ship and of all the seamen and mariners of and on board the defendant was the same § to punish and correct him the said plaintiff for his ill captain as afore- havi-our, offence, and disobedience of orders afore said, and to re- said" perform him and to cause him for the future to observe and per- form his duty as a seaman and mariner of and on board the said ship as he ought to do, and also to deter him the said plaintiff and the other seamen and mariners of and on board the said ship from committing the like ill behaviour, offence, and disobedience of orders for the future at the said time when, &c. to wit, at, &c. afore said, DID CAUSE the said plaintiff to be gently seized and put in irons, and kept and continued so in irons in and on board the said ship for the said space of time in the said first Count of the said declaration mentioned, the same being a reasonable and proper time on that occasion, and also then and there caused him the said PLAINTIFF TO BE STRIPPED, TIED, AND BOUND, FOR THE PURPOSE OF BEING FLOGGED FOR HIS SAID ILL BEHAVIOUR, OFFENCE, AND DISOBEDIENCE OF ORDERS, AND ACCORDINGLY

(2) "and moderately FLOGGED AND CAUSED (2) the said plaintiff TO BE THEN and moderately chastise and correct him" AND THERE GENTLY FLOGGED for his said ill, &c. as it was lawful and right for him to do for the cause afore said, which (3)

(3) "said moderate and gentle chastisement and correction" are the same trespass in the introductory part of this plea mentioned, and whereof the said plaintiff hath above thereof complained against him the said defendant; and this, &c.; wherefore, &c.; [Third plea same as second, till you come to this mark § only inserting what is in the margin and then proceed thus], at the

Third plea states said time when, &c. to wit, &c. did cause the said plaintiff to be that plaintiff being about to depart from the defendant's ship he so was a mariner as afore said, and in order to his being chastised and corrected for his said ill, &c. in that respect at a convenient and proper time for that purpose, but the said defendant in him to be flogged, &c. fact further saith, that it not then being a proper, convenient, or usual time according to the ancient custom and practice used at sea in such like cases for correcting and chastising the said plaintiff as afore said, he the said defendant, as such captain of the said ship as afore said, for securing the said plaintiff in order to his being, and until he could be so chastised and corrected as afore said, caused him the said plaintiff to be put in irons and to be kept and continued so in irons from thence until a proper, convenient, usual, and customary time according to the custom and practice used at sea in such like cases for so correcting and chastising the said plaintiff as afore said, and then and there, to wit, at such proper, &c. for that purpose, that is to say, at the said time when, &c. on board

board the said ship, to wit, at, &c. aforesaid, did cause the said plaintiff to be stripped of his clothes and garments and to be gently tied, laid down, and fastened for the purpose of his receiving such chastisement and correction as aforesaid, and did then and there accordingly gently and moderately chastise and correct him the said plaintiff for his said ill, &c. in and on board the said ship, by then and there gently flogging and causing him to be gently flogged for the same, as it was lawful, &c. [As before in first plea]. Fourth plea same as second, only omitting what is in Italics. Fifth plea same as second, only omitting all that is in Italics and small capitals, and inserting what is in margin from † to §].

V. LAWES.

MOLLITER MANUS IMPOSUIT.

Michaelmas Term, 25th Geo. III.

AND the said defendants, by A. B. their attorney, come and defend the force and injury when, &c. and say that they are not guilty of the several trespasses above laid to their charge, or any or either of them in manner and form as the said plaintiff hath above thereof complained against them, and of this they put themselves upon the country: And for further plea in this behalf as to the said supposed assault in the said first Count of the said declaration mentioned above supposed to have been committed by the said defendant, he the said defendant by leave of the court here for this purpose first had and obtained according to the form of the statute in such case made and provided, says, that (*actio non*); because he saith, that the said plaintiff just before the said time when, &c. in the said first Count of the said declaration mentioned, at, &c. with force and arms, &c. made an assault on the said defendant, and then and there pointed and levelled a certain gun, that is to say, a certain gun loaded with gunpowder and shot at and against the said defendant, and with the said gun so loaded as aforesaid, then and there threatened and attempted to shoot him the said defendant, whereby the life of him the said defendant was then and there in immediate and manifest danger, and thereupon the said defendant, at the said time when, &c. in the said first Count of the said declaration mentioned, at, &c. for the preservation of the life of him the said defendant against the danger aforesaid, and to restrain and prevent the said plaintiff from shooting him the said defendant with the said gun so loaded as aforesaid, gently laid his hands upon the said plaintiff as it was necessary and lawful for him to do for the cause aforesaid which is the said supposed assault in the said first Count of the said declaration mentioned, whereof the said plaintiff hath above complained against him; and this, &c.; wherefore, &c. if, &c.; And for further plea in this behalf as

Justification to an action for assault, &c. that plaintiff presented a gun at defendant, and to prevent him shooting him defendant molliter manus imposuit.

1st plea, son assault demesne.

to the said assaulting, beating, bruising, wounding, and ill treating him the said plaintiff in the said first Count of the said declaration mentioned above supposed to have been committed by him the said plaintiff, he the said defendant by like leave of, &c. according to, &c. says (*adlio non*); because he says, that the said plaintiff just before the said time when, &c. in the said first Count of the said declaration mentioned, at, &c. with force and arms, &c. made an assault upon the said defendant, and then and there pointed, &c. a certain gun, that is to say, &c. at and against the said defendant, and would then and there have shot at and killed or wounded him the said defendant with the said last-mentioned gun so loaded as aforesaid if the said defendant had not then and there immediately defended himself against the said plaintiff, and thereupon he the said defendant did then and there, to wit, at the said time when, &c. in the said first Count of the said declaration mentioned, at, &c. immediately defend himself against the said plaintiff as it was necessary and lawful for him to do for the cause last aforesaid: And the said defendant in fact further saith, that if any hurt or damage then and there happened to the said plaintiff the same was occasioned by the said last-mentioned assault and misbehaviour of the said plaintiff and in the necessary defence of him the said plaintiff; and this, &c.; wherefore, &c. if, &c.:

2nd plea, made an assault upon his master with an ira motus.

And for further plea in this behalf as to the said supposed assault in the said first Count of the said declaration mentioned, and also as to the assaulting, beating, bruising, wounding, and ill treating the said plaintiff in the second Count of the said declaration mentioned above supposed to have been committed by the said James, he the said defendant by like leave of, &c. according to, &c. saith, that the said plaintiff (*adlio non*); because he says, that the said plaintiff just before the said time when, &c. in the said first Count of the said declaration mentioned, at, &c. with force and arms, &c. made an assault upon the said defendant then and there being the master of him the said James, and then and there pointed, &c. a certain, &c. at and against the said defendant, and with the said last-mentioned gun so loaded as aforesaid then and there threatened and attempted to shoot him the said defendant so being the master of him the said James as aforesaid, whereby the life of him the said defendant was then and there in immediate and manifest danger, and thereupon he the said James, at the said time when, &c. in the said first Count of the said declaration mentioned, at, &c. as the servant of the said defendant, and in his aid and assistance, and by his command for the preservation of the life of him the said defendant against the danger last aforesaid, and to restrain and prevent the said plaintiff from shooting him the said defendant with the said last-mentioned gun so loaded as aforesaid, gently laid his hands upon the said plaintiff as it was necessary and lawful for him to do for the cause last aforesaid, whereupon the said plaintiff being greatly irritated and enraged just before the said time when, &c. in the second Count of the said declaration mentioned, at, &c. with force and arms, &c. made an assault on the said James, and would then and there

OF SELF—AND OF THIRD PERSONS.

there have beat, bruised, wounded, and ill treated him if he the said James had not then and there immediately defended himself against the said plaintiff, and thereupon he the said James did then and there, to wit, at the said time when, &c. in the said second Count of the said declaration mentioned, at, &c. immediately defend himself against the said plaintiff as it was necessary and lawful for him to do for the cause last aforesaid, and so the said James in fact saith, that if any hurt or damage then and there happened to the said plaintiff the same was occasioned by the said last-mentioned assault of the said plaintiff and in the necessary defence of him the said plaintiff; and this, &c.; wherefore, &c. if, &c.: And for further plea in this behalf as to the said supposed assault in the fourth Count of the said declaration mentioned, and seizing and taking the said goods and chattels in that Count mentioned, and keeping and detaining the same for the said space of time therein also mentioned above supposed to have been committed by the said defendant and James, they the said defendants by like leave of, &c. according to, &c. say (*affio non*); because they say that the said plaintiff just before the said time when, &c. with force and arms, &c. made an assault on the said defendant, and then and there pointed, &c. a certain, &c. and then and there threatened, &c. to shoot him the said defendant, whereby the life of him the said defendant was then and there in immediate and manifest danger, and thereupon the said defendant and James the said James then being the servant of the said defendant and acting in his aid and assistance and by his command at the said time when, &c. in the said fourth Count of the said declaration mentioned, at, &c. for the preservation of the life of, &c. and to restrain, &c. from shooting, &c. gently laid his hands upon the said plaintiff and upon the said last-mentioned gun so loaded as aforesaid, and then and there for the purpose last aforesaid gently seized and took away from him the said last-mentioned plaintiff the said last-mentioned gun, together with a certain hammer affixed and belonging thereto, being the goods and chattels in the said fourth Count of the said declaration mentioned, and kept and detained the same for the purposes last aforesaid for the said space of time in the said fourth Count of the said declaration mentioned as it was necessary and lawful for them to do for the cause last aforesaid, which is the said supposed assault in the said fourth Count of the said declaration mentioned, and seizing and taking the said goods and chattels in that Count mentioned, and keeping and detaining the same for the said space of time also mentioned, whereof the said plaintiff hath above complained against the said defendant and James; and this, &c.; wherefore, &c. if, &c.: And for further plea in this behalf as to the assaulting, beating, &c. the said plaintiff in the third Count of the said declaration mentioned, and imprisoning the said plaintiff, and keeping and detaining him in prison for the said space of time in that Count mentioned, and also as to the seizing and taking the said goods and chattels in the last Count of the said declaration mentioned, do for the use of plaintiff,

5th plea, the
servant in de-
fence of his
master to pre-
vent mischief
&c.

6th plea, other
servants in de-
fence of master
took the goods
and delivered
to a magistrate
as they ought

and carrying away the same and converting and disposing thereof to the use of the said defendant and James above supposed to have been committed by them the said defendant and James, they the said defendant and James by like leave of, &c. according to, &c. say (*actio non*); because they say that the said plaintiff just before the said time when, &c. in the said third Count of the said declaration mentioned, at, &c. with force and arms made an assault on the said defendant in the peace of God and our said lord the king then and there being, and then and there pointed, &c. a certain, &c. loaded, &c. at and against the said defendant, and with the said last-mentioned gun so loaded as last aforesaid then and there threatened and attempted to shoot the said defendant, whereby the life of him the said defendant was then and there in immediate and manifest danger, and the peace of our said lord the king was then and there greatly disturbed and broken, whereupon the said defendant, James and A. B. the said James and A. B. then being the servants of the said defendant and acting in his aid and assistance and by his command) at the said time when, &c. in the said third Count of the said declaration mentioned, at, &c. for the preservation of the life of him the said defendant against the danger last aforesaid, and to restrain and prevent the said plaintiff from shooting him the said defendant with the said last-mentioned gun so loaded as aforesaid gently laid their hands upon the said plaintiff and upon the said last-mentioned gun so loaded as aforesaid, and then and there for the purposes last aforesaid gently seized and took away from him the said plaintiff the said last-mentioned gun, together with a certain rammer affixed and belonging thereto, being the goods and chattels in the said last Count of the said declaration mentioned, and also then and there apprehended the said plaintiff for the purpose of carrying and conveying him with the said last-mentioned gun and rammer before some one of his majesty's justices of the peace in and for the county of Kent to be dealt with according to law for the said last-mentioned assault and breach of the peace, and on that occasion and for the purposes last aforesaid they the said defendant, James and A. B. then and there kept and detained the said plaintiff with the said last-mentioned gun and rammer in their custody and possession for the said space of time in the said third Count of the said declaration mentioned, and until he the said plaintiff without the licence or consent and against the will of them the said defendants escaped and went at large from and out of the custody of them the said defendants, leaving the said last-mentioned gun and rammer in their possession, and which said last-mentioned gun and rammer they the said defendants not knowing where to find the said plaintiff then and there immediately carried to one C. D. then being one of his majesty's justices of the peace in and for the said county of Kent, and then and there deposited and left the same with him the said C. D. for the use and benefit of the said C. D. as it was lawful for them to do for the cause last aforesaid which are the same assaulting, beating, bruising, wounding, and ill treating the said plaintiff in the third Count of the

the declaration mentioned, and imprisoning the said plaintiff and keeping and detaining him in prison for the said space of time in that Count mentioned, and seizing and taking the said goods and chattels in the last Count of the said declaration mentioned, and carrying away the same and converting and disposing thereof to the use of the said defendants, whereof the said plaintiff hath above complained against the said plaintiff; and this, &c.; wherefore, &c. if, &c.

AND the said Matthew Williamson and Sarah his wife, Wil- Justification by
liam Green, and John Burn, by A. B. their attorney, come and defend the wrong and injury, when, &c. and say, that they are two of them
not guilty of the said several trespasses in the said declaration men- man and wife,
tioned, or of any or either of them, in manner and form as the to an action for
said plaintiff hath above thereof complained against them; and of assaulting plain-
this they put themselves upon the country, &c.: And for further tiff, and taking
plea in this behalf as to the said assaulting the said T. and seizing money from
and laying hold of him the said T. in the said first Count of the him, that the
said declaration mentioned, and as to the said assaulting of the plaintiff owed
Thomas, and seizing and taking from him the said pieces of coin, the husband-
and converting and disposing thereof, in the said second Count of money, and the
the said declaration mentioned, and as to the said assaulting, wife, by his de-
beating, and ill treating the said Thomas in the last Count of gent, touched
the said declaration mentioned, above supposed to have been plaintiff in order
committed by the said Sarah, they the said Matthew and Sarah, to demand the
by leave of, &c. say (*ad hoc non*); because; they say, that the said debt, where-
several trespasses hereinbefore and in the said declaration men- upon he volun-
tioned, and therein supposed to have been committed by the said tarily paid her.
Sarah, are one and the same trespass, and not other or different
trespasses, and that before and at the said time when, &c. in the
said declaration mentioned, to wit, at, &c. in, &c. the said Tho-
mas was justly and truly indebted to the said Matthew in a large
sum of money, to wit, the sum of twenty-six pounds of lawful
money of Great Britain, and that the said M. being in want of
the said money, and the said Sarah meeting the said plaintiff, the
said Sarah, at the request of the said M. then and there gently
took hold of the said T. by the arm to excite his attention that she
might ask him for the said money so due to her said husband, and
the said S. did thereupon then and there civilly ask the said Tho-
mas to pay the said sum of money so due to her said husband, as
she lawfully might do for the cause aforesaid, whereupon the said
Thomas then and there voluntarily paid her the said Sarah the said
pieces of coin in the said declaration mentioned for and on ac-
count and in part payment of the said debt so due to the said M.
which is the same supposed trespass in the introduction to this
plea mentioned, and whereof the said plaintiff hath above thereof
complained against them the said Matthew and Sarah; and this,
&c.; wherefore, &c.

F. BOWER.

This plea was hid before Mr. Serjeant justification, saying that it amounts to
Lawrence, who struck out the special the general issue.

Michael-

Michaelmas Term, 30. Geo. III.

WARD } DECLARATION. First Count for an assault,
 against } battery, and false imprisonment. Second Count for a
 CLARK. } common assault.

Plea, 1st, Ge-
 neral Issue.
 2d, justification
 as a tavern keep-
 er by *molliter ma-
 nus imposit* to
 prevent plaintiff
 from leaving de-
 fendant's house
 without paying
 for what he eat
 and drank.

Plea, 1st, Not Guilty to the whole: And for further plea in this behalf as to the said assaulting, collaring, beating, and ill treating, and imprisoning him the said plaintiff, and keeping and detaining him in prison in the first Count of the said declaration mentioned, and as to the said assaulting, collaring, beating, and ill treating him the said plaintiff in the said second Count of the said declaration mentioned, and thereby above supposed to have been committed and done by the said defendant, she the said defendant, by leave of, &c. (*alio non*); because she says, that the said assaulting, &c. [Same in both Counts], and that before and at the said time in the said declaration mentioned, to wit, at, &c. she the said defendant was the owner and occupier of and kept a certain common licensed wine tavern and victualling-house, and then and there exercised and carried on the business of a tavern keeper and victualler in the said house, and the said defendant, so being a tavern-keeper and victualler, and so keeping such house as aforesaid, the said plaintiff, before the said time when, &c. came into the said house, and then and there called for and caused to be brought to him in the said house victuals and drink, and then and there eat and drank and consumed the same, and thereby then and there incurred and became liable to pay to the said defendant a reckoning to a large amount, to wit, to the amount of two pounds fifteen shillings and sixpence of lawful money of Great Britain, of which the said Charles then and there had notice: And the said defendant in fact further saith, that although she had then and there a lawful demand upon the said plaintiff for and on account of the said reckoning to the amount aforesaid, and although the said reckoning and payment thereof was also then and there in the said house in due manner demanded of the said plaintiff by her the said defendant, yet the said Elizabeth in fact says, that the said plaintiff did not then and there pay or discharge the said reckoning and demand, but then and there wholly refused so to do, and was then and there about to leave and depart from the said house of the said defendant, and would then and there have departed from the said house of the said defendant without paying or discharging the said reckoning and demand had he not been prevented from so doing; whereupon the said defendant, in order to prevent the said plaintiff from so doing, and in order to obtain payment of the said reckoning and demand, at the said time when, &c. to wit, at, &c. in, &c. in the said house of her the said defendant, gently laid her hands upon the said plaintiff, and a little held and detained him, as she lawfully might for the cause aforesaid, whereupon the said plaintiff, being greatly agitated and moved with wrath and anger, then and there assaulted her the said defendant, and would then and there have beat,

h. d. motus.

beat, bruised, wounded, and ill treated her, if she had not then and there defended herself, wherefore she the said Elizabeth did then and there defend herself against the said plaintiff, as she lawfully might for the cause aforesaid; and so she saith, that if any mischief or damage then and there happened to the said Charles, the same happened unto him and proceeded from the said assault so by him made upon the said defendant as aforesaid, and in the defence of her the said Elizabeth from the same, which said premises are the same, &c. whereof, &c.; and this, &c.; wherefore, &c. [There was a third plea, same as the second, only saying that defendant kept a "viſtualling-house" instead of a "tavern", and that plaintiff was otherwise accommodated in defendant's house besides in eating and drinking.]

WM. COCKELL.

Replication thereto: 1st, joins issue on the not guilty; 2d, *de injuria*, &c. To second plea, new assignment for assaulting on other and different occasions. The like to third plea.

S. LE BLANC.

5. Com. Dig. 355. Newton and Trigg. 1. Show. 269. Cl. Ass. 100.

PLEA, 1st, Not Guilty: And for further plea as to, &c. by leave, &c. (*actio non*); because he says, that one A. B. long before, and at the said time when, &c. was, and still is lawfully possessed of and in a certain shop, with the appurtenances, situate, lying, and being in the parish of, &c. in the county of, &c. and being so possessed thereof, she the said plaintiff, at the said time when, &c. with force and arms, &c. entered and came into the said shop of the said A. B. and there made a great noise, disturbance, and affray in the said shop, and then and there greatly disturbed and disquieted the said A. B. in the peaceable and quiet possession, use, and occupation of his said shop, and thereupon he the said defendant, as the servant of the said A. B. and by his command, then and there in the said shop civilly requested the said plaintiff to go and depart out of the said shop, and to cease her said noise and disturbance, which the said plaintiff then and there refused to do, and still staid and continued in the said shop, making and continuing such her said noise and disturbance therein without the leave and licence, and against the will of the said A. B. whereupon the said defendant, as the servant of the said A. B. and by his command, at the said time when, &c. at, &c. in, &c. gently laid his hands upon the said plaintiff in order to pull, push, put, and remove the said plaintiff from and out of the said shop, and was at the said time when, &c. gently pulling, &c. the said plaintiff from and out of the said shop, whereupon the said plaintiff, being angry and in great wrath, then and there with force and arms, &c. in the said shop, made an assault on the said defendant, and would then and there have beat, bruised, wounded, and

Plea in trespass, that A. B. was possessed of a shop, that the plaintiff entered it, made a great noise, &c. *moliter manus* by the defendant as servant to A. B. to turn him out, and that the plaintiff assaulted the defendant, and that the defendant then defended himself, &c.

Id. motus.

TRESPASS.—PLEA—DISTRESS (FOR USING ENGINES, &c.

and ill treated him the said defendant, if he the said defendant had not then and there immediately defended himself against the said plaintiff, wherefore the said defendant did then and there immediately defend himself against the said plaintiff, as he lawfully might for the cause aforesaid; and so the said defendant says, that if any mischief or damage happened to the said plaintiff, the same so happened unto her from the said assault by her made on the said defendant, and in the defence of him the said defendant, in manner aforesaid, which are, &c. whereof, &c.; and this, &c.; wherefore, &c. if, &c.

Drawn by MR. WARREN.

WARD } YORKSHIRE, to wit. Edward Ward com-
a gainst } plains of Thomas Elliott being, &c. [First Count,
ELLOTT. } for assaulting plaintiff and taking away a rabbit net.
Second Count, for taking away a rabbit net.]

Plea (to trespass for an assault and taking away a rabbit net) by the said defendant, appointed his gamekeeper, and the plaintiff not being qualified *molitor natus* to seize the net.

Plea 1st, General Issue: And for further plea in this behalf as to the making an assault upon the said Edward, and seizing, taking, and carrying away the said rabbit net in the said first Count of the said declaration mentioned, and also as to the seizing, taking, and carrying away the said net in the said second Count of the said declaration mentioned above supposed to have been done by leave, &c. (*assensu*); because he saith, the seizing, taking, and carrying the said net in the said first Count of the said declaration mentioned, and the seizing, taking, and carrying away the said net in the said second Count of the said declaration mentioned, are one and the same seizing, taking, and carrying away of one and the same rabbit net, and not other or different, to wit, &c.; and that Henry Wood, doctor in divinity, not being under the rank of an esquire, long before the said time when, &c. to wit, on the tenth of December 1783, and long before was, and continually from thenceforth hitherto hath been and still is lord of the manor of Hernworth, in the said county of York; and the said Henry Wood to being lord of the said manor as aforesaid, long before the said time when, &c. to wit, on the sixteenth of December 1783, at Hernworth aforesaid, according to the form of the statute in such case made and provided, by writing under his hand and seal did authorize, depute, and appoint the said Thomas to be his the said Henry Wood's gamekeeper of and within the said manor during the said Henry Wood's pleasure only, and did thereby (amongst other things) give and grant to the said Thomas, during such the said Henry's pleasure, full power and authority to take all such guns, bows, greyhounds, setting dogs, lurchers, and other dogs, ferrets, trammels, flays, and other nets, snares, and other engines for the taking, killing, and destroying of hares, partridges, or any other game within the said manor and precincts thereof as should be used by any person or persons who by law are prohibited or not duly qualified to keep or use the same; and further the said Henry did thereby give and grant unto the said Tho-

mas,

mas, during the said Henry's pleasure, full power and authority to do all such other acts or things as by the laws of this realm were requisite for the preservation of game within the said manor, and for discovery of offenders therein against the laws and statutes in that behalf made, which said authority, deputation, and appointment, at the said time when, &c. was and still is in full force and effect: And the said Thomas further says, the said Edward, at the said time when, &c. had not lands or tenements, or any estate of inheritance in his own or his wife's right of the clear yearly value of one hundred pounds, or for term of life, nor had any lease or leases of ninety-nine years, or any other time or longer term of the clear yearly value of one hundred pounds, nor was the said Edward, at the said time when, &c. an heir apparent of an esquire or other person of higher degree, nor the owner or keeper of any forest, park, chase, or warren being stocked with deer or conies for his necessary use, but at the said time when, &c. was and still is a person by the statute in that case made and provided prohibited to have or keep for himself, or any other person or persons, any guns, bows, greyhounds, setting-dogs, ferrets, coney dogs, lurchers, flays, nets, labbles, hare-pipers, snares, or other engines for the taking or killing conies, hares, pheasants, partridges, or other game: And the said John further saith, that the said Thomas so being authorized and deputed as aforesaid, and the said Edward so being disqualified and prohibited as aforesaid, because the said Edward, at the said time when, &c. within the precincts of the said manor, did use and keep the said net for the taking and killing of conies within the precincts of the said manor, the said Thomas being gamekeeper, and deputed and authorized as aforesaid at the said time when, &c. did by virtue whereof, and according to the form of the statute within the precincts of the said manor, gently lay his hands on the said Edward in order to take and seize from him the said net so used and kept by the said Edward for the taking and killing of conies, within the precincts of the said manor as aforesaid, and did then and there accordingly take and seize such net from the said Edward, and did carry and deliver the same to the said Henry Wood, so being lord of the said manor as aforesaid, as it was lawful for him to do for the cause aforesaid, which was the same, &c.; and this, &c.; whereof, &c. [Third plea same as second, only stating Henry Wood and William Todd, gentlemen, to be lords of the manor of H. and being such lords of the manor of H. Henry Wood deputed defendant, &c.; and after stating the deputation to be in full force, insert these words: "and no other gamekeeper was appointed by the said William Todd for the said manor"]: And for further plea in this behalf as to the making an assault, &c. (*actio non*); because he says, that the seizing, taking, and carrying away the said net in the said first Count of the said declaration mentioned, and the seizing, taking, and carrying away the said net in the said second Count of the said declaration mentioned, are one and the same seizing, taking, and carrying away of one and the same rabbit, and not other or different, to wit, &c.; and that the said Henry

TRESPASS—PLEA—MO. MA. IMP—(ON LAWFUL

Henry Wood, D. D. and William Todd, long before and at the said time when, &c. were, and continually from thenceforth hitherto have been and still are lords of the manor of H. in the said county of Y. with the appurtenances, and the said Henry Wood and William Todd so being lords of the said manor as aforesaid, because the said Edward, at the said time when, &c. had the said net in his power and custody, and kept the same for killing and destroying the game within the said manor, he the said Edward then and there being a person not qualified by the laws of this realm to keep the same, he the said Thomas, at the said time when, &c. as the servant of the said Henry Wood and William Todd, and by their command, and within the said manor, gently laid his hands upon the said Edward in order to take and seize from him the said net, being found in his power and custody as aforesaid for the killing and destroying the game, and did then and there within the said manor accordingly take and seize such net from the said Edward for the use of the said Henry and William, so being lords of the said manor as aforesaid, as it was lawful for him to do for the cause aforesaid, which are the same, &c.; and this, &c.; wherefore, &c. [Fifth plea same as fourth, omitting William Todd.]

GEO. WOOD.

Replications to all the justifications, protesting insufficiency, for replication *de injuria sua propria absque tali causa*.

Plea to declaration for an assault by husband and wife on plaintiff.

1st, not guilty; 2d, for the wife *moliter manus imposuit* to turn him out of the house; 3d, similar to first Count for husband and wife *moliter manus* by wife to turn him out, plaintiff assaulted her, and both defendants in her defence defended her To 1st Count for husband, only the like with a son assaulted on him.

WEST AND WIFE }
against
EDDINGTON.

AND the said John and Mary his wife come and defend the force and injury when, &c. and say, that they are not guilty of the trespass aforesaid in manner and form as the said George hath above thereof complained against them; and of this they put themselves on the country, &c.: And for further plea as to the assaulting the said George in the first Count of the said declaration mentioned and above supposed to have been committed by the said Mary, she the said Mary, by leave of, &c. saith (*actio non*); because she saith, that the said John, the husband of her the said Mary, long before and at the said time when, &c. was lawfully possessed of and in a certain messuage or dwelling-house, with the appurtenances, situate and being at, &c. in, &c. and being so thereof possessed, he the said George, just before the said time when, &c. at, &c. of his own wrong, and without the licence of the said John entered into the said messuage or dwelling-house of the said John, and then and there made a great noise, disturbance, and affray in the said messuage or dwelling-house, and then and there greatly disturbed and disquieted the said John and his family in the peaceable and quiet possession, use, and occupation of the said messuage or dwelling-house, whereupon the said Mary as the servant of the said John, and by his command just before the said time when, &c. requested the said George to cease his

his said noise and disturbance, and to go and depart out of the said messuage or dwelling-house, to do which he the said George then and there wholly refused, and still continued in the said messuage or dwelling-house against the will of the said John, making and continuing such his noise and disturbance therein, and disturbing and disquieting the said John and his family in the peaceable and quiet possession, use, and occupation thereof, until and at the said time when, &c. for which reason the said Mary, at the said time when, &c. at, &c. in the said messuage or dwelling-house, quietly laid her hands on the said George to pull, put, push, force, and remove him the said George from and out of the said messuage or dwelling-house, and at the said time when, &c. gently endeavoured to pull, &c. him the said George from and out of the said messuage or dwelling-house, as it was lawful for her to do for the cause aforesaid, which is the said assaulting the said George in the said first Count of the said declaration mentioned, whereof the said George hath above complained against the said Mary; without this, that the said Mary is guilty of the trespass aforesaid at, &c. or elsewhere than in the said messuage or dwelling-house at, &c.; and this, &c.; wherefore, &c. if, &c.

J. MORGAN.

Such of the special pleas in this case as are pleaded by one or the defendants alone should seem to be bad, Vide Com. Dig. title Pleadur, 2. A. 3. fol. 163.

1. Edm. Husband and wife not being allowed to sever in pleading, Vide Cro. Jac. 239. 288, 537. Cro. Car. 594. 1. Brownl. 7. 297. Yelv. 280.

And for further plea as to the assaulting the said George in the first Count of the said declaration mentioned, and beating, &c. and giving and striking the said George the said blows and strokes in the said first Count of the said declaration mentioned above supposed to have been committed by the said Mary, they the said Mary, by like leave of, &c. say (*ad hoc non*); because she saith, that the said John, before and at the said time when, &c. was lawfully, &c. with the appurtenances, situate, &c.; and being so, &c. thereof possessed, he the said George, just before the said time when, &c. of his own wrong, and without the licence of the said John, entered, &c. and there made, &c. and then and there greatly disturbed, &c. in the peaceable, &c. whereupon the said Mary; as the servant of the said John, and by his command; just before the said time when, &c. requested the said George to cease his said noise and disturbance, and to go and depart out of the said messuage or dwelling-house, to do which he the said George then and there wholly refused, and still continued in the said messuage or dwelling-house against the will of the said John, making, &c. and disturbing, &c. in the peaceable, &c. until and at the said time when, &c. for which reason the said Mary, as the servant of, &c. at the said time when, &c. in the said messuage or dwelling-house, gently laid, &c. to pull, &c. from and out of, &c. and was at the said time when, &c. pulling, &c. out of the same, whereupon

4th plea, by wife alone in defence of her husband.

TRESPASS—PLEA—SON ASSAULT DEMESNE—

And mutus.

5th plea, as fir-
vant and in de-
fence of her hus-
band.

whereupon the said George being greatly enraged with wrath and anger thereat, at the said time when, &c. in the said messuage or dwelling-house, with force and arms made an assault on the said Mary, and would then and there have beat, bruised, wounded, and ill-treated her the said Mary, if the said John her husband in her aid and assistance had not then and there defended her against the said George, wherefore the said John, as her husband, did then and there in her aid and assistance defend her against the said George, as he lawfully might for the cause aforesaid, and so the said John saith, that if any hurt or damage then and there happened to the said George from the said assault of the said George, the same so happened unto him the said George from the said assault so by him made on the said Mary, and in the defence of the said Mary as aforesaid; without this, that the said John is guilty of the trespass aforesaid, at, &c. or elsewhere than in the said last-mentioned messuage or dwelling-house at, &c.; and this, &c.; wherefore, &c. if, &c.: And for further plea as to the assaulting, &c. in the first, &c. and beating, &c. and giving, &c. in the said first, &c. above supposed, &c. he the said John, by like leave, &c. saith (*actio non*); because he saith, that he the said John, before and at the said time when, &c. was lawfully possessed of, &c. situate, &c. and being so thereof possessed, he the said George, just before the said time when, &c. of his own wrong, and without the licence of the said John, entered, &c. and made, &c. and disturbed, &c. wherefore the said Mary, then and still the wife of the said John, as the servant of the said John, and by his command just before the said time when, &c. requested, &c. to do which he the said George then and there wholly refused, and still continued, &c. for which reason she the said Mary, as the servant of, &c. at the said time when, &c. in the said messuage or dwelling-house, gently laid, &c. to pull, &c. and was at the said time when, &c. gently pulling, &c. whereupon the said George being, &c. with force and arms, &c. made, &c. and would then and there have beat, &c. if he the said John, her husband, in her aid, &c. defended, &c. wherefore the said John, as her husband, did then and there defend, &c. whereupon the said George being greatly enraged with wrath and anger thereat, at the said time when, &c. in the said messuage or dwelling-house at, &c. with force and arms made an assault on the said John, and would then and there have beat, &c. if he the said John had not then and there immediately defended himself against the said George, wherefore he the said John did then and there defend himself against the said George as he lawfully might for the cause aforesaid, and to the said John saith, that if any hurt or damage then and there happened, &c. the same so happened, &c. from the said assault of the said George so by him made on the said John as aforesaid, and in defence of the said John in manner aforesaid; without this, that the said John is guilty of the trespass aforesaid, at, &c.; or elsewhere than in the said last-mentioned dwelling-house, at, &c.; and this, &c.; wherefore, &c.

J. MORGAN.
SON

SON ASSAULT DEMESNE—REPLICATION.

Michaelmas Term, 26. Geo. III.

ELSON } AND the said Richard, as to the said plea of the said
against } Henry by him secondly above pleaded in bar as to the
WARD } trespass in the introduction of such plea mentioned and
above done by the said Henry, says, that notwithstanding any thing
in that plea alledged, he the said Richard ought not to be barred
from having and maintaining his aforesaid action thereof against
him the said Henry; because he says, that the said Henry, at the
said time when, &c. in the said second plea mentioned, at, &c. in,
&c. was with force and arms, &c. assaulting one A. B. the child
of the said Richard, in breach of the peace of our sovereign lord
the now king, and would then and there have beat, bruised,
wounded, and ill-treated the said A. B. if he the said Richard had
not then and there immediately defended his said child against the
said Henry, whereupon he the said Richard did then and there de-
fend his said child against the said Henry, as he might lawfully do
for the cause aforesaid, and which said defence of the said child of
the said Richard by him the said Richard against the said Henry is
the assaulting of the said Henry in his said second plea mentioned,
and thereupon the said Henry being thereby then and there
greatly enraged with wrath and anger at the said time when, &c.
at, &c. of his own wrong made an assault upon the said Richard,
and then and there beat, bruised, wounded, and ill-treated him,
and gave and struck him the said blows and strokes in the said first
Count of the said declaration mentioned, and rent, tore, damag-
ed, injured, and spoiled the clothes and wearing apparel of the said
Richard in the said first Count mentioned, in manner and form as
the said Richard hath above in that Count complained against the
said Henry; and this, &c.; wherefore inasmuch as the said Hen-
ry hath above acknowledged the said trespass, he the said Richard
prays judgment and his damages, by him sustained on occasion
thereof, to be adjudged to him, &c.

Replication to a
plea of son assault
demesne, that de-
fendant was
beating plain-
tiff's child,
that the assault-
ing of defendant
(stated in his
plea) was in
consequence of
the defence of
such child.

Id est motus.

V. LAWES.

NEW ASSIGNMENT.

Trinity Term, 27. Geo. III.

AND the said William and James, by Francis Lockey their at-
torney, come and defend the force and injury when, &c. and say,
that they are not guilty of the trespasses above laid to their charge,
in manner and form as the said Richard hath above complained
against them; and this they put themselves upon the country, &c.;

Plea 1st, Gene-
ral Issue.

TRESPASS.—PLEA.—RIGHT OF—

And Plea, new assignment, that A. B. seised in fee, demised to defendant, in right of which he was entitled to right of way; and because he ploughed up the usual way. assigned another defendant entered last mentioned way.

and the said Richard doth so likewise: And for further plea in this behalf as to the breaking and entering the said close of the said Richard in the said declaration mentioned called the Two Acres under the Elms in the Middle Veer, and the said two closes respectively called the Two Acres in the Middle Veer, and with feet in walking treading down, trampling upon, consuming, and spoiling the turnips, grass, and corn of the said Richard in the said declaration mentioned there growing and being, with part of the said horses, mares, and geldings, part of the said cattle in the said declaration mentioned, depasturing, eating up, treading down, consuming, and spoiling other the turnips, grass, and corn of the said Richard in the said declaration mentioned there growing and being, and with the said carts, waggons, and other carriages digging up, tearing up, subverting, and spoiling the soil of the said Richard in his last-mentioned closes by the said William and James above supposed to have been done, they the said William and James, by leave of the court here to him for that purpose first granted, according to the form of the statute in such case made and provided, say, that the said Richard ought not to have or maintain his aforesaid action thereof against them; because they say, that long before and at the said several times when, &c. one Charles Marfack, esquire, was, and from thenceforth hitherto hath been and still is seised in his demesne as of fee of and in a certain other piece of land called the Two Long Acres, with the appurtenances, at the parish aforesaid, and that the said Charles Marfack, and all those whose estate he now has, and at the said several times when, &c. had of and in the said last-mentioned piece of land called the Two Long Acres, with the appurtenances, for the time being, from time whereof the memory of man is not to the contrary have had, and have been used and accustomed to have, and of right ought to have had, and the said Charles Marfack being so seised as aforesaid, still of right ought to have for himself and themselves, and for his and their farmers and tenants, occupiers of the said last-mentioned piece of land called the Two Long Acres, with the appurtenances, for the time being, a certain way from the common king's highway at the parish aforesaid from Cavertham, in the said county, to Playhatch, in the said county, into, through, and over the said close in which, &c. called the Two Acres under the Elms in the Middle Veer, and the said two closes in the Middle Veer unto the said piece of land of the said Charles Marfack, and from thence so back again in the same to the said common king's highway at the parish aforesaid, to go, return, pass, and repass with their servants, and with their carriages drawn by their cattle every year at all times of the year, as often as need or occasion required for the necessary and convenient cultivation and improvement of the same piece of land of the said Charles Marfack: And the said William and James further say, that the said Charles Marfack being so seised of and in his said piece of land, with the appurtenances, as aforesaid, before the said first time when, &c. to wit, on the fifth day of April,

WAY—PRIVATE—BY PRESCRIPTION.

April, in the year of Our Lord 1785, at the parish of afore-
said, demised the said piece of land, with the appurtenances,
amongst other things, to the said William, to hold the same to him
the said William from the fifth day of April in the year last afore-
said for the space of one whole year then next following, and so
on from year to year for so long time as the said Charles Marfack
and the said William should please; by virtue of which said de-
mise the said William afterwards, and before the said first time
when, &c. to wit, on the sixth day of April, in the year of Our
Lord 1785 aforesaid, entered into the said last-mentioned piece of
land, with the appurtenances, and became and was, and from
thenceforth hitherto hath been and still is possessed thereof: And
the said William and James further say, that before the said several
times when, &c. the said Richard had caused the same way of the
said William in the said close called the Two Acres under the Elms
in the Middle Veer, and the said two closes respectively called the
Two Acres in the Middle Veer, to be ploughed up and sown
with corn, and the corn so sown before and at the said several times
when, &c. the said Richard had caused the same way of the said Wil-
liam in the said close called the Two Acres under the Elms in the
Middle Veer, and the said two closes respectively called the Two
Acres in the Middle Veer, to be ploughed up and sown with corn so
sown before and at the said several times when, &c. was standing
and growing thereon, so that the said William could not conveniently
have or use his same way there, and the said Richard thereupon a
little before the said first time when, &c. to wit, on the day and
year in the said declaration mentioned, assigned a certain other
way in and through a certain part of the said close called the Two
Acres under the Elms in the Middle Veer, and of the said two
closes respectively called the Two Acres in the Middle Veer, to
by the said William for and in lieu of the said way to which he was
entitled as aforesaid, and the said William being so possessed of the
said piece of land so demised to him as aforesaid, he the said Wil-
liam in his own right, and the said James as his servant, and by his
command at the said several times when, &c. entered into the
said three last-mentioned closes in which, &c. with the said carts,
waggons, and other carriages in the said declaration mentioned,
being the carts, waggons, and carriages of the said William, and
with horses, mares, and geldings, part of the said cattle in the said
declaration mentioned, being the cattle of the said William draw-
ing the said carts, waggons, and carriages, to use their said way so
assigned as aforesaid for and in lieu of his said way to which he was
otherwise entitled as aforesaid, and did therewith paise and repairs
from the said common king's highway at the parish afore said into,
through, and over the said three last-mentioned closes in which,
&c. in the said way so assigned there to the said piece of land
so demised to the said as afore said, and from thence back
again in the said way so assigned as afore said to the said com-
mon king's highway at the parish afore said, for the necessary and
convenient cultivation, improvement, and enjoyment of the said

TRESPASS.—PLEA—RIGHT OF WAY—

piece of land so demised to the said William as aforesaid, they the said William and James using the said way so assigned there as it was lawful for them to do for the cause aforesaid, and in so doing they the said William and James did necessarily and unavoidably at the said several times when, &c. with their feet in walking tread down, trampe upon, consume, and spoil a little of the turnips, grafs, and corn of the said Richard in his said three last-mentioned closes in the said way so assigned as aforesaid, and there then growing and being, and with the said last-mentioned horses, mares, and geldings, did necessarily and unavoidably tread down, consume, and spoil a little of the other turnips, grafs, and corn of the said Richard in the same way so assigned as aforesaid, there then also growing and being, and the said last-mentioned horses, mares, and geldings, in passing and repassing along and through the said way so assigned as aforesaid there at the said several times when, &c. by stealth, and against the will of the said William and James did depasture and eat up a little of the other turnips, grafs, and corn in the same way there, and on the sides thereof also then growing and being, and with the wheels of the said carts, waggons, and other carriages, the said William and James, at the said several times when, &c. in passing and repassing in and along the same way in the said three last-mentioned closes in which, &c. did necessarily and unavoidably dig up, tear up, subvert, and spoil a little of the soil of the said Richard there, doing as little damage there to the said Richard as on those occasions they possibly could, which are the same trespasses in the introduction to this plea mentioned; and this the said William and James are ready to verify; whereof they pray judgment if the said Richard ought to have or maintain his aforesaid action thereof against them, &c.:

And Plea, as to entering other premises called, &c. lying and being dispersed in a large common field, that C. M. was seized of other piece of land called, &c. lying in the said large common field, and ploughing up the way, assigned a way over the said last-mentioned premises.

And for further plea in this behalf as to the breaking and entering the said close of the said Richard in the said declaration mentioned called the Two Acres under the Elms in the Middle Veer, and the said two closes respectively called the Two Acres in the Middle Veer, and the said closes called the Four Acres in the Hitching, and one of the said closes or pieces or parcels of land of the said Richard in the said declaration mentioned, to be respectively lying and being dispersed in the said large common field called West Field, and with feet in walking treading down, trampling upon, consuming, and spoiling the turnips, grafs, and corn of the said Richard in the said declaration mentioned there growing and being, and with part of the said horses, mares, and geldings, part of the said cattle in the said declaration mentioned, eating up, treading down, consuming, and spoiling other the turnips, grafs, and corn of the said Richard in the said declaration mentioned there growing and being, and with the wheels of carts, waggons, and other carriages, digging up, tearing up, subverting, and spoiling the soil of the said Richard in his said last-mentioned closes by the said William and James above supposed to have been done, they the said William and James, by like leave of the said court here to them for that purpose first granted, ac-

cording

PRIVATE—By PRESCRIPTION.

according to the form of the statute in such case made and provided, say, that the said Richard ought not to have or maintain his aforesaid action thereof against them; because they say, that before and at the said several times when, &c. the said close called the Two Acres under the Elms in the Middle Veer, and the said two closes respectively called the Two Acres in the Middle Veer, and the said closes called the Four Acres in the Hitching, were and now are situate, lying, and being dispersedly in, and were and are part and parcel of the said large common field called West Field, and the said one of the said closes or pieces or parcels of ground in the said declaration mentioned to be respectively lying and being dispersedly in the said large common field called West Field, at the said several times when, &c. was and is a certain close called the Rod in the Hitching, and situate and being in, and part and parcel of a certain part thereof called the Hitching, and that long before and at the said several times when, &c. the said Charles Marsack was, and from thenceforth hitherto hath been and still is seised in his demesne as of fee of and in a certain other piece of land called the Two Long Acres, with the appurtenances, at the parish aforesaid, and within or part and parcel of the same common field, and the said Charles Marsack, and all those whose estate he now has, and at the said several times when, &c. had of and in the said last-mentioned piece of land called the Two Long Acres, with the appurtenances, for the time being, from time whereof the memory of man is not to the contrary, have had, and have been used and accustomed to have, and of right ought to have had, and the said Charles Marsack being so seised as last aforesaid still of right ought to have for himself and themselves, and for his and their farmers and tenants, occupiers of the said last-mentioned piece of land called the Long Acres, with the appurtenances, for the time being, a certain way from the said common king's highway, at the parish aforesaid, leading from Caversham, in the said county, to Playhatch, in the said county, into, through, and over the said closes in which, &c. called the Two Acres under the Elms in the Middle Veer, and the said two closes in which, &c. respectively called the Two Acres in the Middle Veer, unto the said last-mentioned piece of land of the said Charles Marsack, and from thence so back again in the same way to the said common king's highway, at the parish aforesaid, to go, return, pass, and repass with their servants and their carriages drawn by their cattle every year at all times of the year, as often as need or occasion required, for the necessary and convenient cultivation, improvement, and enjoyment of the said last-mentioned piece of land: And the said defendants further say, that the said Charles Marsack, being so seised of and in his said last-mentioned piece of land, with the appurtenances, as aforesaid, before the said first time when, &c. to wit, on the fifth day of April 1785, at the parish of aforesaid, demised the same piece of land, with the appurtenances, amongst other things, to the said William, to hold the same to him the said William from the said

TRESPASS.—PLEA—RIGHT OF WAY—

fifth of April, in the year last aforesaid, for the space of one whole year thence next following, and so on from year to year for so long time as the said C. M. and the said W. should please; by virtue of which said demise the said William afterwards, and before the first time when, &c. to wit, on the sixth day of April, in the year of Our Lord 1785 aforesaid, entered into the said last-mentioned piece of land, with the appurtenances, and became and was, and from thenceforth hitherto hath been, and still is possessed thereof: And the said William and James further say, that before the said several times when, &c. the said Richard had caused the same way of the said William in the said close called the Two Acres under the Elms in the Middle Veer, and the said two closes respectively called the Two Acres in the Middle Veer to be ploughed up and sown with corn, and the corn so sown, before and at the said several times when, &c. was standing and growing thereon, so that the said William could not conveniently have or use his same way there; and the said Richard thereupon, a little before the first time when, &c. to wit, on the day and year in the said declaration mentioned, assigned a certain other way in and through a certain other part of the said close called the Two Acres under the Elms in the Middle Veer, and of the two closes respectively called the Two Acres in the Middle Veer, and also a certain part of the said close called the Four Acres in the Hitching, and of the said close called the Rod in the Hitching, to be used by the said William for and in lieu of the said last-mentioned way to which he was entitled as aforesaid; and the said William being so possessed of the said piece of land so demised to him as last aforesaid, he the said William in his own right, and the said James as his servant, and by his command, at the said several times when, &c. entered into the five last-mentioned closes in which, &c. with the said carts, waggons, and other carriages in the said declaration mentioned, being the carts, waggons, and carriages of the said William, and with the said horse, mares, and geldings, part of the said cattle in the declaration mentioned, being the cattle of the said William drawing his said carts, waggons, and carriages, to use the said way so assigned as last aforesaid for and in lieu of his said way to which he was otherwise entitled as aforesaid, and did therewith pass and repass from the said common king's highway, at the parish aforesaid, into, through, and over the said five last-mentioned closes in which, &c. in the same way so assigned there to the said piece of land so demised to the said William as last aforesaid, and from thence back again in the same way so assigned as last aforesaid to the said common king's highway, at the parish aforesaid, for the necessary and convenient cultivation, improvement, and enjoyment of the said piece of land so demised to the said William as last aforesaid, they the said William and James using the same way so assigned there, as it was lawful for them to do for the cause aforesaid, and in so doing they the said William and James did necessarily and unavoidably,

PRIVATE—BY PRESCRIPTION AND LICENCE.

at the said several times when, &c. with their feet in walking, tread down, trample upon, and spoil a little of the turnips, grafs, and corn of the said Richard in his said five last-mentioned closes in which, &c. in the same way so assigned there then growing and being, and with the said last-mentioned horses, mares, and geldings, did necessarily and unavoidable tread down, consume, and spoil a little of the other turnips, grafs, and corn of the said Richard in the same way so assigned as last aforesaid there then also growing and being, and the said last-mentioned horses, mares, and geldings, in passing and repassing as last aforesaid, at the said several times when, &c. by stealth, and against the will of the said William and James, snatched, depastured, and eat up a little of the other turnips, grafs, and corn in the same way there and on the sides thereof, also then growing and being, and with the wheels of the said carts, waggons, and other carriages, the said William and James, at the said several times when, &c. in passing and repassing as last aforesaid in the said four last-mentioned closes in which, &c. did necessarily and unavoidably dig up, tear up, subvert, and spoil a little of the soil of the said Richard there, doing as little damage there to the said Richard as on those occasions they possibly could, which are the same trespasses in the introduction to this plea mentioned; and this the said William and James are ready to verify; wherefore they pray judgment if the said Richard ought to have or maintain his aforesaid action thereof against them, &c.: And for further plea in this behalf as to the breaking and entering the said close of the said Richard in the said declaration mentioned called the **Two Acres** under the Elms in the Middle Veer, and the said two closes respectively called the **Two Acres** in the Middle Veer, and the said close called the **Four Acres** in the Hitching, and the said one of the said closes or piece or parcels of ground of the said Richard in the said declaration mentioned to be respectively lying and being dispersedly in the said large common field called **West Field**, and with feet in walking treading down, trampling upon, consuming, and spoiling the turnips, grafs, and corn of the said Richard in the said declaration mentioned there growing and being, and with part of the said horses, mares, and geldings, part of the said cattle in the said declaration mentioned, depasturing, eating up, treading down, consuming, and spoiling other the turnips, grafs, and corn of the said Richard in the said declaration mentioned there growing and being, and with the wheels of carts, waggons, and other carriages, digging up, tearing up, subverting, and spoiling the soil of the said Richard in his last-mentioned closes, by the said William and James above supposed to have been done, they the said William and James, by like leave of the court here to them for that purpose first granted, according to the form of the statute in such case made and provided, say, that the said Richard ought not to have or maintain his aforesaid action thereof against them; because they say, that the said one of the said closes or pieces or parcels of ground of the said

4th Plea, leave
and licence.

TRESPASS.—PLEA.—

said Richard in the said declaration mentioned to be respectively lying and being dispersedly in the said large common field called West Field, at the said several times when, &c. was, and is a certain close called the Wod in the Hitching, and situated in and parcel of the said in part thereof called the Hitching, and that they the said William and James, at the said several times when, &c. by the leave and licence of the said Richard for that purpose first to them given and granted, broke and entered the said close of the said Richard in the said declaration mentioned called the Two Acres under the Elms in the Middle Veer and the said two closes respectively called the Two Acres in the Middle Veer and the said close called the Four Acres in the Hitching and the said close called the Wod in the Hitching, and with feet in walking trod down, trampled upon, consumed, and spoiled the turnips, grafs, and corn of the said Richard in the said declaration mentioned there growing and being, and with horses, mares, and geldings, part of the said cattle in the said declaration mentioned, depastured, eat up, consumed, trod down, and spoiled other the turnips, grafs, and corn of the said Richard in the said declaration mentioned there growing and being, and with the wheels of carts, waggons, and other carriages, dug up, tore up, subverted, and spoiled the soil of the said Richard in his said last-mentioned closes, as they lawfully might for the cause aforesaid, which are the same trespasses in the introduction of this plea mentioned; and this, &c.; wherefore, &c. if, &c.: And for further plea in this behalf as to the breaking and entering one of the said closes of the said Richard in the said declaration mentioned called the Two Acres in the Middle Veer, and the said other closes in which, &c. respectively called the Acre in the Upper Veer, the Half Acre in the Upper Veer, the Hill in the Upper Veer, the Yard in Curlock, and the Acre in Curlock, and one of the said closes or pieces or parcels of ground of the said Richard in the said declaration mentioned to be respectively lying and being dispersedly in the said large common field called West Field, and with feet in walking treading down, &c. the turnips, grafs, and corn of the said Richard in the said declaration mentioned, and then and there growing and being, and with the residue of the said mares, &c. and with the said other cattle in the said declaration mentioned, depasturing, eating up, &c. other the turnips, grafs, and corn of the said Richard in the said declaration mentioned there growing and being, and also as to the breaking and entering the said close of the said Richard in the said declaration mentioned called the Two Acres under the Elms in the Middle Veer, and the other of the said closes of the said Richard in the said declaration mentioned called the Two Acres in the Middle Veer, and the said close called the Four Acres in the Hitching, and the other of the said closes or pieces or parcels of ground in the said declaration mentioned to be respectively lying and being dispersedly in the said large common field called West Field, and with feet in walking treading down, and &c. the turnips and grafs there growing and being, and with the said

th Plea, right
& common of
pasture in all
the premises,
together with
their premises,
any of the said
large common
field (except in
the Hitching),
and that those
tenants should
sow every
year, and
reap in
the common after
the corn was
reaped, but
the tenants did not
sow on the
fourth year.

said residue of the said horses, &c. and with the said other cattle in the said declaration mentioned depasturing, &c. other the grass there then growing and being, above supposed to have been done by the said William and James, they the said William and James, by like leave of, &c. according to the form of, &c. say (*assiduo non*); because they say, that as well the said close in the said declaration mentioned called the Two Acres in the Middle Veer, and in the introduction to this plea first mentioned, and the said other closes in which, &c. respectively called the Acre in the Upper Veer, the Half Acre in the Upper Veer, the Hill in the Upper Veer, the Yard in Curlock, and the Acre in Curlock, as the said closes or pieces or parcels of ground of the said Richard in the said declaration mentioned to be respectively lying and being dispersedly in the said common field called West Field, and in the introduction to this plea first mentioned, are, and at the said several times when, &c. were, from time whereof the memory of man is not to the contrary hitherto have been part and parcel of the said common field called West Field, in the liberty of Eye and Dunsdon, in the said parish of Sonning Eye, and situate and being not in but in other parts thereof than in the said part of the said common field called the Hitching, and that from time whereof the memory of man is not to the contrary hitherto the said common field called West Field, whereof, &c. except the said part thereof called the Hitching, hath been tilled, manured, and husbanded, and hath been used and accustomed to be tilled, &c. and yet of right out to be tilled, &c. in such manner that the same in three years successively of every four years of the same time hath, and ought to have been sown with corn or grain, and hath and ought to have lain fallow every fourth or succeeding year, and that the said close called the Two Acres under the Elms in the Middle Veer, and the said close called the Two Acres in the Middle Veer, in the introduction to this plea lastly mentioned, and the said close called the Four Acres in the Hitching, and the said close or piece or parcel of ground in the said declaration mentioned to be lying and being dispersedly in the said large common field called West Field, in the introduction to this plea lastly mentioned, are, and at the said several times when, &c. were, and from time whereof the memory of man is not the contrary, have been parcel of the said part of the said last-mentioned common field called the Hitching, and that the said last-mentioned close or piece or parcel of ground in which, &c. in the said declaration mentioned to be lying and being dispersedly in the same common field, during all the time aforesaid, was and is a certain close called the Rod in the Hitching, within and parcel of the said part thereof called the Hitching, and that long before, and at the said several times when, &c. the said Charles Marlack was, and from thenceforth hitherto hath been, and still is seized in their demesne as of fee of and in divers, to wit, one hundred acres of land, with the appurtenances, lying and being in the said liberty of Eye and Dunsdon, in the said parish of Sonning Eye, in the said

said county: And the said William and James further say, that the said C. M. and all those whose estates he now hath, and at the said several times when, &c. had of and in his said last-mentioned land, with the appurtenances, for the time being, from time whereof the memory of man is not to the contrary, have had, and have used and been accustomed to have, and of right ought to have had, and the said C. M. being so seised as last aforesaid, still of right ought to have for himself and themselves, his and their tenants and farmers, occupiers of his said last-mentioned land, with the appurtenances, for the time being, common of pasture for all his and their cattle levant and couchant in and upon the said last-mentioned land, with the appurtenances, whereof the said C. M. was so seised as last aforesaid, in manner following, that is to say, in, upon, and throughout the said common field called West Field, whereof, &c. the said part thereof called the Hitching, and his and their own land, the residue thereof only excepted, every year when the said common Field called West Field, whereof, &c. or any part thereof, has been sown with any kind of grain or corn, according to the said usage and course of husbandry, from the time that the grain and corn in that year growing in the same common field hath been cut down and carried away from thence until the said common field called West Field, whereof, &c. or some part thereof, hath been resown with corn or grain, and in every year when the said common field called West Field, whereof, &c. except the said part thereof called the Hitching, hath not been, or ought not to have been sown with corn or grain, but hath or ought to have lain fallow, according to the usage and course of husbandry aforesaid, all times of such year, and also in and upon and throughout the said part of the said last-mentioned common field called the Hitching, his and their own land therein only excepted, every year when the said common field, or any part thereof, hath been sown with any kind of grain or corn, from the time that the grain and corn in that year growing in the same common field hath been cut down and carried away from thence until the same field, or some part thereof, hath been resown with grain or corn, as to the said last-mentioned land of the said C. M. with the appurtenances, belonging and appertaining: And the said William and James further say, that he said C. M. being so seised of and in the said last-mentioned land, with the appurtenances, as aforesaid, before the said first time when, &c. to wit, on, &c. at, &c. demised the same, with the appurtenances, to the said William, to hold the same to him the said William from the said fifth day of, &c. for the space of one whole year then next following, and so on from year to year for so long a time as the said C. M. and the said William should please; by virtue of which said last mentioned demise the said William afterwards, and before the said first time when, &c. to wit, on, &c. entered into the said last-mentioned land, with the appurtenances, and became and was, and from thenceforth hitherto hath been, and still is possessed thereof: And the said Wil-

liam and James further say, that the said common field called West Field, whereof, &c. except the said part thereof called the Hitching, according to the usage and course of husbandry in that behalf aforesaid during the year from and next after the cutting and carrying away the crop of corn there growing, ought not to have been sown with corn or grain, but ought to have lain fallow during the year from and next after the cutting and carrying away the crop of corn there growing in the year of Our Lord 1785, the same being the fourth year in that behalf aforesaid, and the said William being so possessed of the said last-mentioned land so demised to him as last aforesaid, he the said William in his own right, and the said James as his servant, and by his command during the same year and time when the same common field called West Field, whereof, &c. except the said part thereof called the Hitching, ought not to have been sown with grain or corn, but ought to have lain fallow as last aforesaid, that is to say, at the said several times when, &c. put the said residue of the said horses, &c. and the said other cattle in the said declaration mentioned, the same being then the cattle of the said William levant and couchant in and upon his said last-mentioned land, with the appurtenances, into and upon the said close in which, &c. called the Two Acres in the Middle Veer in the introduction to this plea first mentioned, and the said other closes in which, &c. respectively called the Acre in the Upper Veer, the Half Acre in the Upper Veer, the Hill in Upper Veer, the Yard in Curlock, the Acre in Curlock, and the said close or piece or parcel of ground in the said declaration mentioned to be lying and being dispersedly in the said large common field called West Field, and in the introduction to this plea first mentioned, to feed and depasture there, and in the other parts of the said common field called West Field, whereof, &c. except the said part of the said common field called the Hitching, and except the said William's own land in the residue of the said common field, and to use his said common of pasture there, and the said last-mentioned cattle at the said times when, &c. the same being during the same year and time when the said common field called West Field, whereof, &c. except the said part thereof called the Hitching, ought not to have been sown with corn or grain, but ought to have lain fallow as last aforesaid, were in the said closes in which, &c. and in this plea lastly above mentioned, parcel, ~~for~~ feeding and depasturing there, and using the said common of pasture there: And the said William and James further say, that the said part of the said common field called the Hitching was sown with corn in the year of Our Lord 1785, and the said William being so possessed of the said last-mentioned land so demised to him as last aforesaid, he the said William in his own right, and the said James as his servant, and by his command after the corn and grain in that year growing in the said last-mentioned common field had been cut down and carried away from thence, and before the same field, or any part thereof, was resown with grain or corn, to wit, at the said

several times when the trespasses by this plea justified, and by the said declaration supposed to have been committed in such of the said closes in which, &c. as were and are part of the said parcel of the same common field called the Hitching were done, put the said residue of the said horses, &c. and the said other cattle in the said declaration mentioned, the same being the cattle of the said William levant and couchant in and upon the said last-mentioned land, with the appurtenances, into and upon the said close called the Two Acres under the Elms in the Middle Veer, and the said close called the Two Acres in the Middle Veer in the introduction to this plea last mentioned, and the said close called the Four Acres in the Hitching, and the said close called the Rod in the Hitching, to feed and depasture the grafs there, and in the rest of the said part of the said last-mentioned common field called the Hitching (his and their own land only excepted), and to use his said common of pasture there, and the said last-mentioned cattle at the said last-mentioned several times when, &c. the same being after the corn and grain in the said last-mentioned year growing in the said last-mentioned common field had been cut down and carried away from thence, and before the same field, or any part thereof, was resown with corn or grain, were in the said last-mentioned closes in which, &c. parcel, &c. feeding and depasturing the grafs there, and using the said common of pasture there as it was lawful for him to do for the cause in that behalf aforesaid, and the said William and James in so putting the said last-mentioned cattle into the said closes in which, &c. in this plea mentioned, parcel, &c. as aforesaid for the purpose aforesaid, did necessarily and unavoidably with their feet in walking tread down, &c. a little of the turnips and grafs of the said Richard then growing in the said closes in which, &c. in this plea mentioned, parcel, &c. and also the corn of the said Richard then growing in the said close called the Two Acres in the Middle Veer, in the introduction to this plea first mentioned, and the said other closes in which, &c. respectively called the Acre in the Upper Veer, the Half Acre in the Upper Veer, the Hul in the Upper Veer, the Yard in Curlock, the Acre in Curlock, and the said close or piece or parcel of ground in the said declaration mentioned to be lying and being dispersedly in the said large common field called West Field, and in the introduction to this plea first mentioned, doing as little damage there to the said Richard as on those occasions they possibly could, which are the same trespasses in the introduction to this plea mentioned; and this, &c.; wherefore, &c. if, &c.: And for further plea in this behalf as to the breaking and entering one of the said closes of the said Richard in the said declaration mentioned called the Two Acres in the Middle Veer, and the said other closes in which, &c. respectively called the Acre in, &c. and one of the said closes or pieces or parcels of ground of the said Richard in the said declaration mentioned, to be respectively lying and being dispersedly in the said large common field called the West Field, and with feet in walking treading, &c. the turnips,

6th Plea, common of pasture, and like custom, with residue of horses, bulls, &c. in part of the last mentioned common field called the Hitching.

turnips, grafs, and corn of the faid Richard in the faid declaration mentioned there growing and being, and with the faid refidue of the faid horfes, &c. and with the faid bulls, &c. part of the faid cattle in the faid declaration mentioned, depafturing, eating, &c. other turnips, grafs, and corn of the faid Richard in the faid declaration mentioned there growing and being: And alfo as to the breaking and entering of the faid clofe of the faid Richard in the faid declaration mentioned called the Two Acres under the Elm in the Middle Veer, and the other of the faid clofes of the faid Richard in the faid declaration mentioned called the Two Acres in the Middle Veer, and the faid clofe called the Four Acres in the Hitching, and the other of the faid clofes or pieces or parcels of ground in the faid declaration mentioned to be refpectively lying and being difperfedly in the faid large common field called Weft Field, and with feet in walking treading down, &c. the turnips and grafs there growing and being, and with the refidue of the faid horfes, &c. and with the faid bulls, &c. part of the faid cattle in the faid declaration mentioned depafturing, &c. other the turnips and grafs there growing and being above fupposed to have been done by the faid William and James, they the faid William and James, by like leave of, &c. according to, &c. fay (*adlio non*); becaufe they fay, that as well the faid laft-mentioned clofe in the faid declaration mentioned called the Two Acres in the Middle Veer, and in the introduction to this plea firft mentioned, and the faid other clofes in which, &c. refpectively called, &c. &c. as the faid one piece or parcel of ground of the faid Richard in the faid declaration mentioned to be lying and being difperfedly in the faid common field called Weft Field, and in the introduction to this plea firft mentioned are, and at the faid feveral times when, &c. were, and from time whereof the memory of man is not to the contrary, hitherto have been part and parcel of the faid common field called Weft Field, in the faid liberty of Eye and Dunfdon, in the faid parifh of Sonning Eye, and fitate and being not in but in other parts thereof than in the faid part thereof than the part of that common field called the Hitching, and that from time whereof the memory of man is not to the contrary hitherto the faid common field called Weft Field, whereof, &c. except the faid part thereof called the Hitching, hath been tilled, &c. and hath been ufed and accuftomed to be tilled, and yet of right ought to be tilled in fuch manner that the fame in three years fucceffively of every four years ~~of the~~ the fame time hath and ought to have been fown with corn or grain, and hath and ought to have lain fallow every fourth year or fucceeding year, and that the faid clofe called the Two Acres under the Elms in the Middle Veer, and the faid clofe called the Two Acres in the Middle Veer in the introduction to this plea laftly mentioned, and the faid clofe called the Four Acres in the Hitching, and the faid clofe or piece or parcel of ground in the faid declaration mentioned to be lying and being difperfedly in the faid large common field called Weft Field, in the introduction to this plea laftly mentioned, are and

TRESPASS.—PLEA—

and at the said several times when, &c. were, and from time whereof the memory of man is not to the contrary have been parcel of the said last-mentioned common field called the Hitching; and that the said last-mentioned close or piece or parcel of ground in which, &c. in the said declaration mentioned to be lying and being dispersedly in the same common field during all the time aforesaid was and is a certain close called the Wod in the Hitching, within and parcel of the said part thereof called the Hitching, and that long before and at the said several times when, &c. the said C. M. was, and from thenceforth hitherto hath been and still is seised in his demesne as of fee of and in divers, to wit, one hundred acres of land, lying and being in the said liberty of Eye and Dunston, in the said parish of Sonning Eye, in the said county: And the said William and James further say, that the said C. M. and all those whose estate he now has, and at the said several times when, &c. had of and in his said last-mentioned land, with the appurtenances, for the time being, from time whereof the memory of man is not to the contrary, have had and have used, and been accustomed to have, and of right ought to have for himself and themselves, his and their tenants and farmers, occupiers of his said last-mentioned land, with the appurtenances, for the time being, common of pasture for all his and their commonable cattle levant and couchant in and upon the said last-mentioned land, with the appurtenances, whereof the said C. M. was so seised as last aforesaid, in manner following, that is to say, in, upon, and throughout the said common field called the West Field, whereof, &c. the said part thereof called the Hitching, and his and their own lands the residue thereof only excepted every year when the said common field called West Field, whereof, &c. or any part thereof hath been sown with any kind of grain or corn, according to the usage and course of husbandry last aforesaid, from the time that the grain and corn in that year growing in the same common field hath been cut down and carried away from thence until the said field called West Field, or some part thereof, hath been resown with grain or corn, and in every year when the said common field called West Field, whereof, &c. except the said part thereof called the Hitching, hath not been or ought not to have been sown with corn or grain, but hath or ought to have lain fallow according to the course and usage of husbandry last aforesaid at all times of such year, and also, in, upon, and throughout the said part of the said common field called the Hitching (his and their own land therein only excepted) every year when the same common field, or any part thereof, hath been sown with any kind of grain or corn from the time that the grain and corn in that year growing in the same common field hath been cut down and carried away from thence, until the same field, or some part thereof, hath been resown with grain or corn, as to the said last-mentioned land of the said C. M. with the appurtenances, belonging and appertaining: And the said William and James further say, that the said C. M. being so seised of and in his said last-mentioned

COMMON OF PASTURE.

389

mentioned land, with the appurtenances, as aforesaid, before the said first time when, &c. to wit, on, &c. at, &c. demised the same, with the appurtenances, to the said William, to hold, &c. &c. [Finish this plea same as the last]: And for further plea in this behalf as to the breaking and entering the said closes of the said Richard in the said declaration mentioned called the Acre against Fox Hill, and the Yard upon the Hill, and the said two closes or pieces or parcels of ground in the said declaration mentioned to be lying and being dispersedly in the said common field called Dean Field, and with sect in walking, &c. the said grass there growing and being, and with the said cattle in the said declaration mentioned there depasturing, &c. other the grass of the said Richard there also growing and being, above supposed to have been done by the said William and James, they the said William and James, by like leave of, &c. according to, &c. say (*ad id non*); because they say, that as well the said closes in the said declaration mentioned called the Acre against Fox Hill, and the Yard upon the Hill, as the said closes or pieces or parcels of ground of the said Richard in the said declaration mentioned, to be respectively lying and being dispersedly in the said common field called Dean Field, are, and at the said several times when, &c. from time whereof the memory of, &c. hitherto have been part and parcel of the said common field called Dean Field, and situate, lying, and being in the said liberty of, &c.: And the said William and James further say, that long before and at the said several times when, &c. the said C. M. was, and from thenceforth hitherto hath been and still is seised in his demesne as of fee of and in divers, to wit, one hundred acres of land, with the appurtenances, situate, lying, and being in the said liberty of, &c. and that the said C. M. and all those whose estate he hath, and at the said several times when, &c. had in his said last-mentioned land, with the appurtenances, from time whereof the memory of, &c. have had, and have used and been accustomed to have, and of right ought to have had, and the said C. M. being so seised as last aforesaid still of right ought to have for himself and themselves, his and their farmers and tenants, occupiers of his said last-mentioned land, with the appurtenances, for the time being, common of pasture in, upon, and throughout the said common field called Dean Field, whereof, &c. his and their own lands therein only excepted, for all his and their cattle levant and couchant in and upon the said last-mentioned land, with the appurtenances, whereof he was seised as aforesaid, yearly and every year in manner following, to wit, in every year when the said common field called Dean Field, whereof, &c. or any part thereof, hath been sown with corn or grain from the time that all the corn and grain sowed in the said common field called Dean Field, whereof, &c. hath been cut down and carried away from thence until the said common field called Dean Field, whereof, &c. or some part thereof, hath been re-sown with grain or corn in every year when neither the said common field called Dean Field, whereof, &c. nor any part thereof,

7th Plea, like custom to have common of pasture in other premises, making part of another large common field.

thereof, hath been sown with corn or grain at all times of every such year as to the said last-mentioned land, with the appurtenances, whereof the said C. M. was so seised as aforesaid, belonging and appertaining: And the said William and James further say, that the said C. M. being so seised of and in his said last-mentioned land, with the appurtenances, as aforesaid, before the said first time when, &c. to wit, on, &c. demised the same, with the appurtenances, to the said William, to hold the same to him the said William from, &c. for the space of one whole year then next following, and so on from year to year for so long a time as the said C. M. and William should please; by virtue of which said last-mentioned demise the said William afterwards, and before the said first time when, &c. to wit, on, &c. entered into the said last-mentioned land, with the appurtenances, and became and was, and from thenceforth hath been and still is possessed thereof: And the said William and James further say, that the said William being so possessed thereof as aforesaid at the said several times when, &c. all the corn or grain then last growing in the said common field called Dean Field, whereof, &c. having been cut down and carried away from thence, and no other corn or grain having been resown in or upon the said common field called Dean Field, or any part thereof, at the said several times when, &c. or any of them, he the said William in his own right, and the said James as his servant, and by his command at the said several times when, &c. did put the said cattle in the said declaration mentioned, being the cattle of the said William levant and couchant upon the said last-mentioned land so demised as last aforesaid in and upon the said closes in which, &c. in this plea mentioned, parcel, &c. to feed and depasture the grass then growing there, and in the other parts of the said common field called Dean Field, whereof, &c. except the said William's own land therein to use his said common of pasture there, and the said last-mentioned cattle at the said several times when, &c. nor corn or grain being at any of those times resown in or upon the same common field, or any part thereof, were in the said closes in which, &c. in this plea mentioned, parcel, &c. feeding and depasturing the grass there then growing, and using the same common of pasture there as it was lawful to do for the purpose aforesaid, and the said William and James in so putting the said last-mentioned cattle into the said closes in which, &c. in this plea mentioned, parcel, &c. as aforesaid, for the purpose last aforesaid, did necessarily and unavoidably with their feet in walking tread, &c. a little of the grass of the said Richard then growing in the said closes in which, &c. in this plea mentioned, parcel, &c. doing as little damage there to the said Richard as on those occasions they possibly could, which are the same trespasses in the introduction to this plea mentioned; and this, &c.; wherefore, &c. if, &c.: And for further plea in this behalf as to the breaking, &c. &c. [Finish this plea as the last, only instead of saying cattle, say, horses, mares, geldings, &c.]; and this, &c.; wherefore, &c. if, &c. G. S. HOLROYD.

REPLICATION—NEW ASSIGNMENT

And as, to the said plea of the said William and James by them secondly above pleaded in bar as to that part of the trespasses above newly assigned, as in the introductory part of that plea is mentioned and above done by the said William and James, he the said Richard says, that he ought not to be barred from having and maintaining his aforesaid action thereof against them; because he says, that the said William and James, at the said several times when, &c. of their own wrong, broke and entered into the said several closes of the said Richard in the said declaration mentioned called the Acre against Fox Hill and the Yard upon the Hill, and the said two closes or pieces or parcels of ground in the said declaration mentioned to be respectively lying and being in the said common field called Dean Field, and with feet in walking, and by the said cattle in the said new assignment mentioned trod down, trampled upon, eat up, consumed, and spoiled the turnips, grafs, and corn of the said Richard there then respectively growing and being, in manner and form as the said Richard hath above thereof in the said new assignment complained against them; without this, that the said C. M. and all those whose estate he now has, and at the said several times when, &c. had of and in his said last-mentioned land, with the appurtenances, from time whereof the memory of man is not to the contrary, have had, have used, and been accustomed to have, and of right ought to have had, and the said C. M. being so seised as last aforesaid, still of right ought to have for himself and themselves, his and their tenants and farmers, occupiers of his said last-mentioned land, with the appurtenances, for the time being, common of pasture, for all his and their cattle levant and couchant in and upon the said last-mentioned land, with the appurtenances, whereof the said C. M. was so seised as last aforesaid yearly and every year in manner following, that is to say, in, upon, and throughout the said common field called Dean Field, whereof, &c. (his and their own land only excepted) in every year when the said common field called Dean Field, whereof, &c. or any part thereof, hath been sown with corn or grain from the time that all the corn and grain sown in the said common field called Dean Field, whereof, &c. hath been cut down and carried away from thence until the time that some part of the said common field called Dean Field, whereof, &c. other than his and their own land therein, after such part thereof hath been re-sown with corn or grain, and before the said corn or grain so re-sown, or any part thereof, hath been cut down, or hath been hained up and fenced off to prevent such cattle lawfully being in any other parts of the said common field called Dean Field, whereof, &c. from straying and escaping into the said part so hained up or fenced off as aforesaid, and from that time in, upon, and throughout such respective parts of the said common field called Dean Field, whereof, &c. as afterwards have remained for any time not hained up or fenced off as aforesaid, (his and their own land therein only excepted) until the same (except as last aforesaid) have respectively been so hained up or fenced off as aforesaid, after the same (except as last aforesaid)

Replication to
ad plea of new
assignment.

Traverses cus-
tom and com-
mon of pasture
as set out.

TRESPASS.—REPLICATION.—

said) have been respectively reſown with corn or grain, and be-
 fore the ſame corn or grain ſo reſown, or any part thereof, hath
 been cut down, and in every year when neither the ſaid corn or
 field called Dean Field, whereof, &c. or any part thereof, hath
 been ſown with corn or grain then in, upon, and throughout the
 ſaid common field called Dean Field, whereof, &c. his and their
 own land therein only excepted, at all times of every ſuch year
 as to the ſaid laſt-mentioned land, with the appurtenances, where-
 of the ſaid C. M. was ſo ſeiſed as laſt aforeſaid, belonging and ap-
 pertaining, in manner and form as the ſaid William and James in
 their ſaid plea ſo by them ſecondly above pleaded to the ſaid new
 assignment as aforeſaid in that behalf alledged; and this, &c.;
 wherefore inasmuch as the ſaid William and James have above
 acknowledged the ſaid treſpaſſes by that plea above pleaded to, he
 the ſaid Richard prays judgment and his damages, by him ſustain-
 ed on occaſion of the committing thereof, to be adjudged to him,
 &c.: And as to the ſaid plea of the ſaid William and James by
 them thirdly above pleaded in bar as to that part of the treſpaſſes
 above newly assigned, as in the introductory part of that plea is
 mentioned and above done by the ſaid William and James, he the
 ſaid Richard ſays, that he ought not to be barred from having
 and maintaining his aforeſaid action thereof againſt them; becauſe
 he ſays, that the ſaid William and James, at the ſaid ſeveral times
 when, &c. of their own wrong broke and entered the ſaid cloſe of
 the ſaid Richard in the ſaid declaration mentioned called the Acre
 againſt Fox Hill and the Yard upon the Hill, and the ſaid two
 cloſes or pieces or parcels of ground in the ſaid declaration men-
 tioned to be lying and being diſperſedly in the ſaid common field
 called Dean Field, and with feet in walking, and by horſes, &c.
 part of the ſaid cattle in the ſaid new assignment mentioned, trod
 down, trampled upon, cat up, conſumed, and ſpoiled the turnips,
 graſs, and corn of the ſaid Richard there reſpectively growing
 and being, in manner and form as the ſaid Richard hath above
 in the ſaid new assignment complained againſt them; without this,
 that the ſaid C. M. and all thoſe whoſe eſtate he now has, and at
 the ſaid ſeveral times when, &c. had of and in the ſaid laſt-men-
 tioned lands, with the appurtenances, from the time whereof the
 memory of man is not to the contrary, have had and have been
 uſed and accuſtomed to have, and of right ought to have had, and
 the ſaid C. M. being ſo ſeiſed as laſt aforeſaid, ſtill of right ought
 to have for himſelf and themſelves, his and their tenants and far-
 mers, occupiers of his ſaid laſt-mentioned land, with the appurte-
 nances, for the time being, common of paſture for all his and
 their commonable cattle levant and couchant in and upon the ſaid
 laſt-mentioned land, with the appurtenances, whereof the ſaid
 C. M. was ſo ſeiſed as laſt aforeſaid, yearly and every year in
 manner following, that is to ſay, in, upon, and throughout the
 ſaid common field called Dean Field, whereof, &c. (his and their
 own land therein only excepted) in every year when the ſaid com-
 mon field called Dean Field, whereof, &c. or any part thereof,
 hath been ſown, &c. &c. (as before) hath been hained up or
 fenced

To 3d Pla.

Traverse.

fenced off to prevent such cattle lawfully being on any other part of the said common field called Dean Field, whereof, &c. from straying and escaping into the same part so hained up and fenced off as last aforesaid, and from that time in, upon, and throughout such respective parts of the said common field called Dean Field, whereof, &c. as afterwards have remained for any time not hained up or fenced off as last aforesaid (his and their own land therein only excepted) until the same (except as last aforesaid, have respectively been hained up or fenced off as last aforesaid, after the same (except as last aforesaid) have been respectively sown with corn or grain, and before the said corn or grain so sown, or any part thereof, hath been cut down, and in every year when neither the said common field called Dean Field, whereof, &c. or any part thereof, hath been sown with corn or grain then in, upon, and throughout the said common field called Dean Field, whereof, &c. (his and their own land therein only excepted) at all times of every such year as to the said last-mentioned land, with the appurtenances, whereof the said C. M. was so seised as last aforesaid, belonging and appertaining, in manner and form as the said W. and J. have above in their said third plea to the said new assignment alledged; and this, &c.; wherefore inasmuch as the said William and James have acknowledged the said trespasses by that plea above pleaded to, he the said Richard prays judgment and his damages, by him sustained on occasion of committing thereof, to be adjudged to him, &c. And the said Richard, as to the said plea of the said William and James by them secondly above pleaded in bar as to the trespasses in the introductory part of that plea mentioned, and by the said William and James above done, say, that he ought not to be barred from having and maintaining his aforesaid action thereof against the said William and James; because protesting that the said C. M. and all those whose estate he now hath, and at the said several times when, &c. had of and in the said piece of land in the said second plea mentioned called the Two Long Acres, with the appurtenances, for the time being, whereof the memory of man is not to the contrary, have not had, nor have been used nor accustomed to have, nor of right ought to have had, nor ought the said C. M. still of right ought to have for himself and themselves, and for his and their farmers and tenants, occupiers of the said piece of land called the Two Long Acres; with the appurtenances, for the time being, a certain way from the common highway at the parish aforesaid leading from Caversham, in the said county, to Playhatch, in the said county, into, through, and over the said close in which, &c. called the Two Acres under the Elms in the Middle Veer, and the said two closes in which, &c. respectively called the Two Acres in the Middle Veer, unto the said piece of land of the said Charles Marfack, and from thence so back again in the same way to the said common king's highway to the parish aforesaid, to go, return, pass, and repass with their servants, and with their carriages drawn by their cattle every

Replication and
new assignment
to plea 2d.
Protesting no
such was in 2d
plea.

year and at all times of the year as often as need or occasion required, for the necessary and convenient cultivation, improvement, and enjoyment of the same piece of land of the said Charles Marsack, in manner and form as the said William and James have above in their second plea in that behalf alledged; for replication in this behalf he the said Richard says, that the said William and James, at the said several times when, &c. of their own wrong broke and entered the said closes of the said Richard in the said declaration mentioned called the Two Acres under the Elms in the Middle Veer, and the said two closes respectively called the Two Acres in the Middle Veer, and with feet in walking trod down, trampled upon, consumed, and spoiled the turnips, grafs, and corn of the said Richard in the said declaration mentioned, there growing and being, and with part of the said horses, mares, and geldings, part of the said cattle in the said declaration mentioned, depastured, eat up, trod down, consumed, and spoiled other the turnips, grafs, and corn of the said Richard in the said declaration mentioned there growing and being, and with the wheels of carts, waggons, and other carriages, dug up, tore up, subverted, and spoiled the soil of the said Richard in his said last-mentioned closes, in manner and form as the said Richard hath above thereof complained against them the said William and James; without this, that the said Richard, before the said first time when, &c. assigned a certain other way in and through a certain part of the said close under the Elms in the Middle Veer, and of the said two closes respectively called the Two Acres in the Middle Veer, to be used by the said William for and in lieu of the same way to which the said William is by the said second plea in that behalf alledged; and this he the said Richard is ready to verify; wherefore inasmuch as the said William and James have above acknowledged the said trespasses by that plea above pleaded to, he the said Richard prays judgment and his damages, by him sustained on occasion of the committing thereof, to be adjudged to him, &c.:

And as to the said plea of the said William and James by them thirdly above pleaded in bar as to the said trespasses in the introductory part of that plea mentioned, and by the said William and James above done, he the said Richard says that he ought not to be barred from having and maintaining his aforesaid action thereof against him; because protesting that the said Charles Marsack, and all those whose estate he now has, and at the said several times when, &c. had of and in the said piece of land called the Two Long Acres in the said third plea mentioned, with the appurtenances, for the time being, from time whereof the memory of man is not to the contrary have not had, nor been used nor accustomed to have, nor of right ought to have had, nor ought the said Charles Marsack still of right to have for himself and themselves, and for his and their farmers and tenants, occupiers of the said last-mentioned piece of land called the Two Long Acres, with the appurtenances, for the time being, a certain way from the said common king's highway at the parish aforesaid, leading

Traverse of assignment of another way.

To 3d Plea, protesting no such right of way in the Two Long Acres, &c.

from Caversham, in the said county, to Playhatch, in the said county, into, through, and over the said close in which, &c. called the Two Acres under the Elms in the Middle Veer, and the said two closes in which, &c. respectively called the Two Acres in the Middle Veer unto the said last-mentioned piece of land of the said Charles Marfack, and from thence so back again in the same way to the said common king's highway at the parish aforesaid, to return, pass, and repass with their servants, and with their carriages drawn by their horses every year and at all times of the year, as often as need or occasion required, for the necessary and convenient cultivation and improvement of the same piece of land of the said Charles Marfack in manner and form as the said William and James have above in their said third plea in that behalf alledged; for replication in this behalf he the said Richard says, that the said William and James, at the said several times when, &c. of their own wrong broke and entered the said closes of the said Richard in the said declaration mentioned called the Two Acres under the Elms in the Middle Veer, and the said two closes respectively called the Two Acres in the Middle Veer, and the said close called the Four Acres in the Hitching, and one of the said closes or parcels of ground of the said Richard in the said declaration mentioned there growing and being, and with part of the said horses, mares, and geldings, part of the said cattle in the said declaration mentioned, depastured, eat up, trod down, consumed, and spoiled other the grass and corn of the said Richard in the said declaration mentioned there growing and being, and with carts, waggons, and other carriages, dug up, tore up, subverted, and spoiled the soil of the said Richard in his said last-mentioned closes, in manner and form as the said Richard hath above thereof complained against them the said William and James; without this, that the said Richard, before the said first time when, &c. assigned a certain other way in and through a certain other part of the said close called the Two Acres under the Elms in the Middle Veer, and of the said two closes respectively called the Two Acres in the Middle Veer, and also a certain part of the said close called the Four Acres in the Hitching, and of the said close called the Rod in the Hitching, to be used by the said William for and in lieu of the said last-mentioned way to which the said William is by the said third plea supposed to be entitled as aforesaid, in manner and form as the said William and James have above in their said third plea in that behalf alledged; and this he the said Richard is ready to verify; wherefore inasmuch as the said William and James have above acknowledged the said trespass by that plea above pleaded to, he the said Richard prays judgment and his damages, by him sustained on occasion of the committing thereof, to be adjudged to him, &c.: And as to the said plea of the said William and James by them fourthly above pleaded in bar as to the said trespass in the introductory part of that plea mentioned, and by the said William and James above done, he the said Richard says, that he ought not to

Traverse of assignment of another way.

To 4th Plea, d. injuria, &c. and issue.

be barred from having and maintaining his aforefaid action thereof againſt them ; becauſe he ſays, that the ſaid William and James, at the ſaid ſeveral times when, &c. of their own wrong, and without any ſuch cauſe as is by them above in that plea alledged, broke and entered the ſaid cloſe of the ſaid Richard in the ſaid declaration mentioned called the Two Acres under the Elms in the Middle Veer, and the ſaid two cloſes reſpectively called the Two Acres in the Middle Veer, and the ſaid cloſes called the Four Acres in the Hitching, and the ſaid one of the ſaid cloſes or pieces or parcels of ground of the ſaid Richard in the ſaid declaration mentioned to be reſpectively lying and being diſperſedly in the ſaid large common field called Weſt Field, and with feet in walking trod down, trampled upon, conſumed, and ſpoiled the turnips, graſs, and corn of the ſaid Richard in the ſaid declaration mentioned there growing and being, and with part of the ſaid horſes, mares, and geldings, part of the ſaid cattle in the ſaid declaration mentioned, depaſtured, eat up, trod down, conſumed, and ſpoiled other the turnips, graſs, and corn of the ſaid Richard in the ſaid declaration mentioned there growing and being, and with the wheels of carts, waggonſ, and other carriages, dug up, tore up, ſubverted, and ſpoiled the ſoil of the ſaid Richard in the ſaid laſt-mentioned cloſes, in manner and form as the ſaid Richard hath above thereof complained againſt them the ſaid William and James ; and this he prays may be enquired of by the country,

To 5th plea, protesting no such custom (as set out) in common field called Deep Field.

&c. : And as to the said plea of the said William and James by them fifthly above pleaded in bar as to the said trespass in the introductory part of that plea mentioned and above done by the said William and James, he the said Richard says, that he ought not to be barred from having and maintaining his aforesaid action thereof against them ; because protesting that from time whereof the memory of man is not to the contrary hitherto the said common field called West Field, whereof, &c. (except the said part thereof called the Hitching) hath not been tilled, manured, and husbanded, nor hath been used and accustomed to be tilled, manured, and husbanded, nor yet of right ought to be tilled, manured, and husbanded in such manner that the same in three years successively of every four years of the same time hath and ought to have been sown with corn or grain, and hath and ought to have lain fallow every fourth or succeeding year, in manner and form as the said William and James have above in their said fifth plea in that behalf alledged ; for replication in this behalf he the said Richard says, that the said William and James, at the said several times when, &c. of their own wrong broke and entered one of the said closes of the said Richard in the said declaration mentioned called the Two Acres in the Middle Veer, and the said other closes in which, &c. respectively called the Acre in the Upper Veer, the Half Acre in the Upper Veer, the Hill in the Upper Veer, the Yard in the Curlock, and the Acre in Curlock, and one of the said closes or pieces or parcels of ground of the said Richard in the said declaration mentioned to be respectively lying

NEW ASSIGNMENT.

397

and being disperfedly in the faid large common field called **West Field**, and with feet in walking trod down, trampled upon, consumed, and fpoiled the turnips, grafs, and corn of the faid Richard in the faid declaration mentioned there growing and being, and with the refidue of the faid horfes, mares, and geldings, and with the faid other cattle in the faid declaration mentioned depaftured, eat up, trod down, consumed, and fpoiled other turnips, grafs, and corn of the faid Richard in the faid declaration mentioned there growing and being, and alfo broke and entered the faid clofe of the faid Richard in the faid declaration mentioned called the **Two Acres** under the Elms in the **Middle Veer**, and the other of the faid closes of the faid Richard in the faid declaration mentioned called the **Two Acres** in the **Middle Veer**, and the faid closes called the **Four Acres** in the **Hitching**, and the other of the faid closes or pieces or parcels of ground in the faid declaration mentioned to be lying and being disperfedly in the faid large common field called **West Field**, and with feet in walking trod down, trampled upon, consumed, and fpoiled the turnips and grafs there growing and being, and with the faid refidue of the faid horfes, mares, and geldings, and with the faid other cattle in the faid declaration mentioned, depaftured, eat up, trod down, consumed, and fpoiled other the turnips and grafs there growing and being in manner and form as the faid Richard hath above thereof complained againft them the faid William and James; without this, that the faid Charles Marfack, and all thofe who'e eftate he now has, and at the faid feveral times when, &c. had of and in his faid laft mentioned land, with the appurtenances, for the time being, from time whereof the memory of man is not to the contrary, have had, and have ufed and been accuftomed to have, and of right ought to have had, and the faid Charles Marfack, being fo feifed as laft aforefaid, ftill of right ought to have for himfelf and themfelves, his and their tenants and farmers, occupiers of his faid laft-mentioned land, with the appurtenances, for the time being, common of pafture for all his and their cattle levant and couchant in and upon the faid laft-mentioned land, with the appurtenances, whereof the faid Charles Marfack was fo feifed as laft aforefaid, in manner following, that is to fay, in, upon, and throughout the faid common field called **West Field**, whereof, &c. the faid part thereof called the **Hitching**, and his and their own land in the refidue thereof only excepted, every year when the faid common field called **West Field**, whereof, &c. or any part thereof, has been fown with any kind of grain or corn, according to the faid uſage and courſe of huſbandry in the faid fifth plea mentioned, from the time that the grain and corn in that year growing in the ſame common field hath been cut down and carried away from thence until the faid field called **West Field**, whereof, &c. or ſome part thereof, hath been reſown with grain or corn, and in every year when the faid common field called **West Field**, whereof, &c. except the ſame part thereof called the **Hitching**, hath not been, nor ought to have been fown with corn or grafs, but hath

Traverſing com-
mon of paf-
ture in that field.

or ought to have lain fallow, according to the usage and course of husbandry aforesaid, at all times of such year, and also in, upon, and throughout the said part of the said last-mentioned common field called the Hitching, his and their own land therein only excepted, every year when the said common field, or any part thereof, hath been sown with any kind of grain or corn, from the time that the grain and corn in that year growing in the same common field hath been cut down and carried away from thence until the same field, or some part thereof, hath been resown with grain or corn, as to the said last-mentioned land of the said Charles Marksack, with the appurtenances, belonging and appertaining, in manner and form as the said William and James have above in their said fifth plea in that behalf alledged; and this he the said Richard is ready to verify; wherefore inasmuch as the said William and James have above acknowledged the said trespass by that plea above pleaded to, he the said Richard prays judgment and his damages, by him sustained on occasion of the committing thereof,

To 6th Plea, protesting no such custom, &c. in lands lying dispersedly in the large common field, and defendants do injuria, &c.

to be adjudged to him, &c.: And as to the said plea of the said William and James by them sixthly above pleaded in bar as to the said trespass in the introductory part of that plea mentioned, and above done by the said William and James, he the said Richard says, that he ought not to be barred from having and maintaining his aforesaid action thereof against them; because protesting, that from time whereof the memory of man is not to the contrary, hitherto the said common field called West Field, whereof, &c. except the said part thereof called the Hitching, hath not been tilled, manured, and husbanded, nor hath been used nor accustomed to be tilled, manured, and husbanded, nor yet of right ought to be tilled, manured, and husbanded in such manner that the same in three years successively of every four years of the same time hath and ought to have been sown with corn or grain, nor hath nor ought to have lain fallow every fourth succeeding year in manner and form as the said William and James have above in their said sixth plea in that behalf alledged; for replication in this behalf he the said Richard says, that they the said William and James, at the said several times when, &c. of their own wrong, broke and entered one of the said closes of the said Richard in that said declaration mentioned called the Two Acres in the Middle Veer, and the said other closes in which, &c. respectively called the Acre in the Upper Veer, the Half Acre in the Upper Veer, the Hill in the Upper Veer, the Yard in Curlock, and the Acre in the Curlock, and one of the said closes or pieces or parcels of ground of the said Richard in the said declaration mentioned to be respectively lying and being dispersedly in the said large common field called West Field, and with feet in walking trod down, trampled upon, consumed, and spoiled the turnips, grass, and corn of the said Richard in the said declaration mentioned there growing and being, and with the said residue of the said horses, mares, and geldings, and with the said bulls, oxen, cows, and sheep, part of the said cattle in the said declaration mentioned, depastured, eat up, trod down, consumed, and spoiled other turnips, grass, and corn of the said Richard in the said

said declarati^{on} mentioned there growing and being, and also broke and entered the said close of the said Richard in the said declaration called the Two Acres under the Elms in the Middle Veer, and the other of the said closes of the said Richard in the said declaration mentioned called the Two Acres in the Middle Veer, and the said closes called the Four Acres in the Hitching, and the other of the said closes or pieces or parcels of ground in the said declaration mentioned to be respectively lying and being dispersedly in the said large common field called West Field, and with feet in walking trod down, trampled upon, consumed, and spoiled the turnips, grafs, and corn there growing and being, and with the said residue of the said horses, mares, and geldings, and with the said bulls, oxen, cows, and sheep, part of the said cattle in the said declaration mentioned, depastured, eat up, trod down, consumed, and spoiled other turnips and grafs there growing and being in manner and form as the said Richard hath above thereof complained against them the said William and James; without this, that the said Charles Marfack, and all those whose estate he now has, and at the said several times when, &c. had of and in his said last-mentioned land, with the appurtenances, for the time being, from time whereof the memory of man is not to the contrary, have had, and have used and been accustomed to have had, and of right ought to have had, and the said Charles Marfack, being to seized as last aforesaid, still of right ought to have for himself and themselves, his and their tenants and farmers, occupiers of his said last mentioned land, with the appurtenances, for the time being, common of pasture for all his and their commonable cattle levant and couchant in and upon the said last-mentioned land, with the appurtenances, whereof the said Charles Marfack was so seized as last aforesaid in manner following, that is to say, in, upon, and throughout the said common field called the West Field, whereof, &c. the said part thereof called the Hitching, and his and their own land in the residue thereof only excepted, every year when the said common field called West Field, whereof, &c. or any part thereof, hath been sown with any kind of grain or corn, according to the usage and course of husbandry last aforesaid, from the time that the grain and corn in that year growing in the same common field hath been cut down and carried away from thence until the said field called West Field, whereof, &c. or some part thereof, hath been resown with corn or grain, and in every year when the said common field called West Field, whereof, &c. except the said part thereof called the Hitching, hath not been, or ought not to have been sown with corn or grain, but hath or ought to have lain fallow, according to the usage and course of husbandry last aforesaid, at all times of such year, and also in, upon, and throughout the said part of the said last-mentioned common field called the Hitching (his and their own land therein only excepted), every year when the said common field, or any part thereof, hath been sown with any kind of grain or corn from the time that the grain and corn in that year growing in the same common

TRESPASS.—REPLICATION—

common field hath been cut down and carried away from thence until the same field, or some part thereof, hath been resown with grain or corn, as to the said last-mentioned land of the said Charles Marlack, with the appurtenances, belonging and appertaining, in manner and form as the said William and James have above in their said sixth plea in that behalf alledged; and this he the said Richard is ready to verify; wherefore inasmuch as the said William and J. have above acknowledged the said trespass in that plea above pleaded to, he the said Richard prays judgment and his damages, by him sustained on occasion of the committing thereof, to be adjudged to him, &c.: And as to the said plea of the said William and James by them seventhly above pleaded in bar as to the said trespass in the introductory part of that plea mentioned, and above done by the said William and James, he the said Richard says, that he ought not to be barred from having and maintaining his aforesaid action thereof against them; because he says, that the said William and James, at the said several times when, &c. of their own wrong, broke and entered the said closes of the said Richard in the said declaration mentioned called the Acre against Fox Hill, and the Yard upon the Hill, and the said two closes or pieces or parcels of ground in the said declaration mentioned to be lying and being dispersedly in the said common field called Dean Field, and with feet in walking trod down, trampled upon, consumed, and spoiled the grafs there growing and being, and with the said cattle in the said declaration mentioned depastured, eat up, trod down, consumed, and spoiled other the grafs of the said Richard there also growing and being, in manner and form as the said Richard hath above thereof complained against them

the said William and James; without this, that the said Charles Marlack, and all those whose estate he hath, and at the said several times when, &c. had in his said last-mentioned land, with the appurtenances, from time whereof the memory of man is not to the contrary, have had, and have used and been accustomed to have, and of right ought to have had, and the said Charles Marlack, being so seised as last aforesaid, still of right ought to have for himself and themselves, his and their farmers and tenants, occupiers of his said last-mentioned land, with the appurtenances, for the time being, common of pasture in, upon, and throughout the said common field called Dean Field, whereof, &c. (his and their own lands therein only excepted) for all his and their own cattle levant and couchant in and upon the said last-mentioned land, with the appurtenances, whereof he was so seised as aforesaid, yearly and every year, in manner and form following, to wit, in every year when the said common field called Dean Field, whereof, &c. or any part thereof, hath been sown with corn or grain, from the time that all the corn and grain sown in the said common field called Dean Field, whereof, &c. hath been cut down and carried away from thence until the said common field called Dean Field, whereof, &c. or some part thereof, hath been resown with grain or corn, and in every year when neither the said common field called

To 7th Plea, de
injur. &c.

Traverse of
common of pas-
ture.

called Dean Field, whereof, &c. nor any part thereof, hath been sown with corn or grain, at all times of every such year as to the said last-mentioned land, with the appurtenances, whereof the said Charles Marfack was so seised as aforesaid, belonging and appertaining, in manner and form as the said William and James have above in their seventh plea in that behalf alledged; and this he the said Richard is ready to verify; wherefore inasmuch as the said W. and James have above acknowledged the said trespass by that plea above pleaded to, he the said Richard prays judgment and his damages, by him sustained on occasion of the committing thereof, to be adjudged to him, &c.: And as to the said plea of the said William and James by them eighthly above pleaded in bar as to the said trespass in the introductory part of that plea mentioned, and above done by the said William and James, he the said Richard says, that he ought not to be barred from having and maintaining his aforesaid action thereof against them; because he says, that the said William and James, at the said several times when, &c. of their own wrong, broke and entered the said closes of the said Richard in the said declaration mentioned called the Acre against the Fox Hill, and the Yard upon the Hill, and the said two closes or pieces or parcels of ground in the said declaration mentioned to be lying and being dispersedly in the said common field called Dean Field in the said declaration mentioned, and with feet in walking trod down, trampled upon, consumed, and spoiled the grass there growing and being, and with the said horses, mares, and geldings, bulls, oxen, cows, and sheep, part of the said cattle in the said declaration mentioned, there depastured, eat up, trod down, consumed, and spoiled other the grass of the said Richard there also growing and being in manner and form as the said Richard hath above thereof complained against them the said William and James; without this, that the said Charles Marfack, and all those whose estate he hath, and at the said several times when, &c. had in his said last-mentioned land, with the appurtenances, from time whereof the memory of man is not to the contrary, have had, and have used and been accustomed to have, and of right ought to have had, and the said Charles Marfack, being so seised as last aforesaid, still of right ought to have for himself and themselves, his and their farmers and tenants, occupiers of his said last-mentioned land, with the appurtenances, for the time being, common of pasture in, upon, and throughout the said common field called Dean Field, whereof, &c. (his and their own land therein only excepted) for all his and their commonable cattle levant and couchant in and upon the said last-mentioned land, with the appurtenances, whereof he was seised as aforesaid, yearly and every year, in manner and form following, to wit, in every year when the said common field called Dean Field, whereof, &c. or any part thereof, hath been sown with corn or grain, from the time that all the corn and grain sown in the said common field called Dean Field, whereof, &c. hath been cut down and carried away from thence

To the 8th Plea,
de injuria, &c.

Traverse of
custom.

New assignment
to all the pleas.
Bill exhibited not
only for tres-
passes attempt-
ed to be justi-
fied, but for
other trespasses
at other times,
&c.

until the said common field called Dean Field, whereof, &c. or some part thereof, hath been reſown with grain or corn, and in every year when neither the ſaid common field called Dean Field, whereof, &c. nor any part thereof, hath been ſown with corn or grain, at all times of every year as to the ſaid laſt-mentioned land of the ſaid Charles Maſſack, with the appurtenances, belonging and appertaining, in manner and form as the ſaid William and James have above in their ſaid laſt plea in that behalf alledged; and this he the ſaid Richard is ready to verify; wherefore inſo-much as the ſaid William and James have above acknowledged the ſaid treſpaſs by that plea above pleaded to, he the ſaid Richard prays judgment and his damages, by him ſuſtained on occaſion of the committing thereof, to be adjudged to him, &c.: And the ſaid Richard, as to the ſaid ſecond, third, fourth, fifth, ſixth, ſeventh, and eighth pleas of the ſaid William and James by them above pleaded in bar as to the ſaid treſpaſſes in the introductory part of thoſe pleas reſpectively mentioned, and above done by the ſaid William and James, further ſays, that he brought this action and exhibited his aforeſaid bill therein againſt the ſaid William and James not only for the ſaid ſeveral treſpaſſes above by thoſe pleas acknowledged and attempted to be juſtified, but alſo for that the ſaid William and James, at other times and on other occaſions, and for other purpoſes than in thoſe pleas are reſpectively mentioned, and alſo out of the ſame ſuppoſed ways in the ſaid ſecond and third pleas reſpectively mentioned and thereby alledged to have been aſſigned and ſet out by the ſaid Richard for and in lieu of the ſaid ways to which the ſaid William is by thoſe pleas ſuppoſed to be entitled, and alſo after the ſaid common fields called Weſt Field and Dean Field in the aforeſaid cloſes of the ſaid Richard therein, and in various other parts whereof other than and beſides the ſaid William's own land therein had been reſpectively and rightfully reſown with corn and grain next after all the corn and grain then laſt and rightfully growing in thoſe common fields reſpectively had been cut down and carried away from thence reſpectively, and before ſuch corn and grain ſo ſown in the ſaid common fields reſpectively had been cut down and carried away from thence, with force and arms, &c. broke and entered the ſaid ſeveral cloſes in the introductory part of the ſaid ſecond, third, fourth, fifth, ſixth, ſeventh, and eighth pleas reſpectively mentioned, and with feet in walking, and by the cattle mentioned in thoſe pleas and others, trod down, trampled upon, eat up, conſumed, and ſpoiled the turnips, graſs, and corn of the ſaid Richard there then reſpectively growing and being, and with the wheels of the ſaid carts and other carriages in the ſaid declaration mentioned tore up, ſubverted, damaged, and ſpoiled the ſoil in and of thoſe ſeveral and reſpective cloſes in manner and form as the ſaid Richard hath above complained againſt them the ſaid William and James; which ſaid treſpaſſes ſo above newly aſſigned are other and different treſpaſſes than the ſaid treſpaſſes by the ſaid William and James in and by their ſaid ſecond, third, fourth, fifth, ſixth, ſeventh,

seventh, and eighth pleas acknowledged and attempted to be justified; wherefore inasmuch as the said William and James have not answered the said trespasses so newly assigned, he the said R. prays judgment and his damages, by him sustained on occasion of the committing thereof, to be adjudged to him, &c.

G. Woon.

And the said William and James, as to the said plea of the said Richard by him above pleaded by way of reply to the said plea of the said William and James by them secondly above pleaded in bar as to the trespass in the introductory part of that plea mentioned, and by the said William and James above supposed to be done as before, say, that the said Richard assigned the said other way in and through a certain part of the said close called the Two Closes under the Elms in the Middle Veer, and of the said close respectively called the Two Acres in the Middle Veer, to be used by the said William for and in lieu of the same way to which the said William is so entitled as aforesaid in manner and form as the said William and James have above in their said second plea in that behalf alleged; and of this they put themselves upon the country, &c.: And the said William and James, as to the said plea of the said Richard by him above pleaded by way of reply to the said plea of the said William and James by them thirdly above pleaded in bar as to the trespass in the introductory part of that plea mentioned, and by the said William and James above supposed to be done as before, say, that the said Richard assigned the said other way in and through a certain other way, part of the said close called the Two Acres under the Elms in the Middle Veer, of the said two closes respectively called the Two Acres in the Middle Veer, and also a certain other part of the said close called the Four Acres in the Hatching, and of the said close called the Rod in the Hatching, to be used by the said William for and in lieu of the said last-mentioned way to which the said William is entitled as aforesaid, in manner and form as the said William and James have above in their said third plea in that behalf alleged; and of this they put themselves upon the country, &c.: And the said William and James, as to the said plea of the said Richard by him above pleaded by way of reply to the said plea of the said William and James by them fourthly above pleaded in bar as to the trespass in the introductory part of that plea mentioned, and by the said William and James above supposed to be done, and in which same replication the said Richard hath above prayed that the matters therein contained and alleged may be enquired of by the country, say, that they do the like: And the said William and James, as to the said plea of the said Richard by him above pleaded by way of reply to the said plea of the said William and James by them fifthly above pleaded in bar as to the said trespass in the introductory part of that plea mentioned, and by the said William and James above supposed to be done as before, say, that the said Charles Marfack, and all those whose estate he now

Rejoinder and
issue to the first
seven pleas, and
plea to new as-
signment.

3d Plea.

4th Plea.

5th Plea.

has,

has, and at the said several times when, &c. had of and in his said last-mentioned land, with the appurtenances, for the time being, from time whereof the memory of man is not to the contrary, have had, and have used and been accustomed to have, and of right ought to have had, and the said Charles Marfack, being so seised as last aforesaid, still of right ought to have for himself and themselves, and his and their tenants and farmers, occupiers of his said last-mentioned land, with the appurtenances, for the time being, common of pasture for all his and their cattle levant and couchant in and upon the said last-mentioned land, with the appurtenances, whereof the said Charles Marfack was so seised as last aforesaid, in manner following, that is to say, in, upon, and throughout the said common field called West Field, whereof, &c. the said part thereof called the Hitching, and his and their own land in the residue thereof only excepted, every year when the said common field called W. F. whereof, &c. or any part thereof, has been sown with any kind of grain or corn, according to the usage and course of husbandry in the said fifth plea mentioned, from the time that the grain or corn in that year growing in the same common field called West Field, whereof, &c. or some part thereof, hath been resown with grain or corn, and in every year when the said common field called West Field, whereof, &c. except the said part thereof called the Hitching, hath not been, or ought not to have been sown with corn or grain, but hath or ought to have lain fallow, according to the usage and course of husbandry aforesaid, at all times of such year, and also in, upon, and throughout the said part of the said last-mentioned common field called the Hitching, his and their own land therein only excepted, every year when the said common field, or any part thereof, hath been sown with any kind of grain or corn, from the time that the grain and corn in that year growing in the said common field hath been cut down and carried away from thence until the same field, or some part thereof, hath been resown with grain or corn, as to the said last-mentioned land of the said Charles Marfack, with the appurtenances, belonging and appertaining, in manner and form as the said William and James have above in their said fifth plea in that behalf alledged; and of this they put themselves upon the country: And the said William and James, as to the said plea of the said Richard by him above pleaded by way of reply to the said plea of the said William and James by them sixthly above pleaded in bar as to the trespass in the introductory part of that plea mentioned, and by the said William and James above supposed to be done as before, say, that the said Charles Marfack, and all those whose estate he now has, and at the said several times when, &c. had of and in his said last-mentioned land, with the appurtenances, for the time being, from time whereof the memory of man is not to the contrary, have had, and have used and been accustomed to have had, and of right ought to have had, and the said Charles Marfack, being so seised as last aforesaid, still of right ought to have for himself and them—

NEW ASSIGNMENT.

themselves, his and their tenants and farmers, occupiers of his said last-mentioned land, with the appurtenances, for the time being, common of pasture for his and their commonable cattle levant and couchant in and upon the said last-mentioned land, with the appurtenances, whereof the said Charles was so seised as last aforesaid, in manner following, that is to say, in, upon, and throughout the said common field called the West Field, whereof, &c. the said part thereof called the Hitching and his and their own land in the residue thereof only excepted, every year when the said common field called West Field, whereof, &c. or any part thereof, hath been sown with any kind of grain or corn, according to the usage and course of husbandry last aforesaid, from the time that the grain and corn in that year growing in the same common field hath been cut down and carried away from thence until the said field called West Field, whereof, &c. or some part thereof, hath been re-sown with grain or corn, and in every year when the said common field called West Field, whereof, &c. except the said part thereof called the Hitching, hath not been, or ought not to have been sown with corn or grain, but hath or ought to have lain fallow, according to the usage and course of husbandry last aforesaid, at all times of such year, and also in, upon, and throughout the said part of the said last-mentioned common field called the Hitching, his and their own land therein only excepted, every year when the same common field, or any part thereof, hath been sown with any kind of grain or corn, from the time that the grain and corn in that year growing in the same common field hath been cut down and carried away from thence until the same field, or some part thereof, hath been re-sown with grain or corn, as to the said last-mentioned land of the said Charles Marlack, with the appurtenances, belonging and appertaining, in manner and form as the said William and James in their sixth plea in that behalf alledged; and of this they put themselves upon the country, &c.: And the said ^{7th Plea.} William and James, as to the said plea of the said Richard by him above pleaded by way of reply to the said plea of the said William and James by them seventhly above pleaded in bar as to the trespass in the introductory part of that plea mentioned, and by the said William and James above supposed to be done as before, say, that the said Charles Marlack, and all those whose estate he hath, and at the said several times when, &c. had in his said last-mentioned land, with the appurtenances, from time whereof the memory of man is not to the contrary, and have used and been accustomed to have had, and the said Charles Marlack, being so seised as last aforesaid, still of right ought to have for himself and themselves, his and their farmers and tenants, occupiers of his said last-mentioned land, with the appurtenances, for the time being, common of pasture in, upon, and throughout the said common field called Dean Field, whereof, &c. (his and their own land therein only excepted) for all his and their own cattle levant and couchant in and upon the said last-

last-mentioned land, with the appurtenances, whereof he was so seised as aforesaid yearly and every year in manner and form following, to wit, in every year when the said common field called Dean Field, whereof, &c. or any part thereof, hath been sown with corn or grain from the time that all the corn and grain sown in the said common field called Dean Field, whereof, &c. hath been cut down and carried away from thence until the said common field called Dean Field, whereof, &c. or some part thereof, hath been resown with grain or corn, and in every year when neither the said common field called Dean Field, whereof, &c. nor any part thereof, hath been sown with corn and grain at all times of every such year, as to the said last-mentioned land, with the appurtenances, whereof the said Charles Marlack was so seised as aforesaid, belonging and appertaining, in manner and form as the said William and James have above in their said seventh plea in that behalf alledged; and of this they put themselves upon the country: And the said William and James, as to the said plea of the said Richard by him above pleaded by way of reply to the said plea of the said William and James by them eighthly above pleaded in bar as to the trespass in the introductory part of that plea mentioned, and by the said William and James above supposed to be done as before, say, that the said Charles Marlack, and all those whose estate he hath, and at the said several times when, &c. had in his said last-mentioned land, with the appurtenances, from time whereof the memory of man is not to the contrary, have had and have used and been accustomed to have, and of right ought to have had, and the said Charles Marlack being so seised as last aforesaid, still of right ought to have for himself and themselves, his and their farmers and tenants, occupiers of his said last-mentioned land, with the appurtenances, for the time being, common of pasture in, upon, and throughout the said common field called Dean Field, whereof, &c. (his and their own land therein only excepted) for all his and their commonable cattle levant and couchant in and upon the said last-mentioned land, with the appurtenances, whereof he was so seised as aforesaid yearly and every year in manner and form following, to wit, in every year when the said common field called Dean Field, whereof, &c. or any part thereof, hath been sown with corn or grain from the time that all the corn and grain sown in the said common field called Dean Field, whereof, &c. hath been cut down and carried away from thence until the said common field called Dean Field, whereof, &c. or some part thereof, hath been resown with grain or corn, and in every year when neither the said common field called Dean Field, whereof, &c. or any part thereof, hath been sown with corn or grain at all times of every such year as to the said last-mentioned land of the said Charles Marlack, with the appurtenances, belonging and appertaining, in manner and form as the said William and James have above in their said last plea in that behalf alledged; and of this they put themselves upon the country, &c.: And the said William and James, as to the said supposed

8th Plea.

9th Plea.
First plea to new
assignment.

posed trespass above newly assigned, say, that they are not guilty. ^{Not guilty,} thereof in manner and form as the said Richard hath above in pleading alledged; and of this they put themselves upon the country, &c.: And for further plea in this behalf as to breaking ^{2d, Custom to} and entering the said closes of the said Richard in the said declaration mentioned called the Acre against Fox Hill, and the Yard ^{have common of} upon the Hill, and the said two closes or pieces or varcels of ^{pasture} ground in the said declaration mentioned to be respectively lying and being dispersedly in the said common field called Dean Field, and with feet in walking, and by the cattle in the said new assignment mentioned treading down, trampling upon, eating up, consuming, and spoiling other the turnips, grais, and corn of the said Richard there then respectively growing and being, above newly assigned, and above supposed to have been done by the said William and James, they the said William and James, by leave of the court here for this purpose first had and obtained, according to the form of the statute in such case made and provided, say, that the said Richard ought not to have or maintain his aforesaid action thereof against them; because they say, that as well the said closes in the said declaration mentioned called the Acre against Fox Hill and the Yard upon the Hill, as the said closes or pieces or parcels of ground of the said Richard in the said declaration mentioned, to be respectively lying and being dispersedly in the said common field called Dean Field, are, and at the said several times when, &c. above newly assigned, were, and from time whereof the memory of man is not to the contrary, hitherto have been part and parcel of the said common field called Dean Field, situate, lying, and being in the said liberty of Eye and Dunsdon, in the said parish of Sonning Eye, in the said county of Oxford, and that long before and at the said several times when, &c. the said Charles Marlack was, and from thenceforth hitherto hath been, and still is seised in his demesne as of fee of and in divers, to wit, one hundred acres of land, with the appurtenances, lying and being in the said liberty of Eye and Dunsdon, in the said parish of Sonning Eye, in the said county, and the said William and James further say, that the said Charles Marlack, and all those whose ^{from a certain} estate he now has, and at the said several times when, &c. had ^{time till corn has} of and in his said last-mentioned land, with the appurtenances, ^{been cut, &c.} from time whereof the memory of man is not to the contrary ^{and hained up} have had, and have used and been accustomed to have, and of ^{or fenced off to} right ought to have had, and the said Charles Marlack being ^{prevent cattle} so seised as last aforesaid still of right ought to have for himself ^{escaping, &c.} and themselves, his and their tenants and farmers, occupiers of his said last-mentioned land, with the appurtenances, for the time ^{being,} being common of pasture for his and their cattle levant and couchant in and upon the said last-mentioned land, with the appurtenances, whereof the said Charles Marlack was so seised as last aforesaid yearly and every year in manner following, that is to say, in, upon, and throughout the said common field called Dean Field, whereof, &c. or any part thereof, hath been sown with corn or

grain from the time that all the corn or grain sown in the said common field called Dean Field, whereof, &c. hath been cut down and carried away from thence *until the time that some part of the said common field called Dean Field, whereof, &c. other than his and their own land therein (after such part thereof hath been resown with corn or grain, and before the said corn or grain so resown, or any part thereof, hath been cut down, hath been hained up or fenced off to prevent such cattle lawfully being in any other parts of the said common field called Dean Field, whereof, &c. from straying and escaping into the said part so hained up or fenced off as aforesaid, and from that time in, upon, and throughout such respective parts of the said common field called Dean Field, whereof, &c. as afterwards have remained for any time not hained up or fenced off as aforesaid, his and their own land therein only excepted, until the same (except as last aforesaid) have respectively been so hained up or fenced off as aforesaid, after the same (except as last aforesaid) have been respectively resown with corn or grain so resown, or any part thereof, hath been cut down, and in every year when neither the said common field called Dean Field, whereof, &c. or any part thereof, hath been sown with corn or grain then in, upon, and throughout the said common field called Dean Field, whereof, &c. (his and their own land therein only excepted) at all times of every such year as to the said last-mentioned lands, with the appurtenances, whereof the said Charles Martack was so seised as last aforesaid, belonging and appertaining: And the said William and James further say, that the said Charles Martack, being so seised of and in his said last-mentioned land, with the appurtenances as aforesaid, before the said first time when, &c. to wit, on the fifth day of April, in the year of Our Lord 1785, at the parish of Sonning Eye aforesaid, in the county aforesaid, demise the same, with the appurtenances, to the said William, to hold the same to him the said William from the said fifth day of April in the year last aforesaid for the space of one whole year then next following, and so on from year to year for so long time as the said Charles Martack and the said William should please; by virtue of which said last-mentioned demise the said William afterwards, and before the said first time when, &c. to wit, on the sixth day of April, in the year last aforesaid, entered into the said last-mentioned land, with the appurtenances, and became and was, and from thenceforth hitherto hath been, and still is possessed thereof: And the said William and James further say, that the said William being so possessed thereof as aforesaid at the said several times when, &c. all the corn and grain then last growing in the said common field called Dean Field, whereof, &c. being cut down and carried away from thence, and ~~the said Charles~~ which, &c. in the introduction to this plea mentioned afterwards, not being nor having been, nor any part thereof been or having been hained up or fenced off as aforesaid at the said several times when, &c. or any of them, he the said William in his own right, and the said James his servant, and by his command at the said several*

several times when, &c. did put the said cattle in the said new assignment mentioned, being the said cattle of the said William levant and couchant upon the said last-mentioned land so demised as last aforesaid, into and upon the said closes in which, &c. in the introduction to this plea mentioned, parcel, &c. to feed and depasture there, and in other parts of the said common field called Dean Field, whereof, &c. which were not then hained up or fenced off in manner aforesaid, except the said William's own land therein to use his said common of pasture there, and the said last-mentioned cattle, at the said several times when, &c. the said closes in which, &c. in the introduction to this plea mentioned, not being nor having been, nor any part thereof being nor having been at any of those times hained up or fenced off as aforesaid, were in the said closes in which, &c. in the introduction to this plea mentioned, parcel, &c. feeding and depasturing the turnips, grass, and corn there then growing, and using the same common of pasture there as it was lawful to do for the cause in that behalf aforesaid, and the said William and James, in so putting the said last-mentioned cattle into the said closes in which, &c. in the introduction to this plea mentioned, parcel, &c. as aforesaid, for the purpose last aforesaid, did necessarily and unavoidably with their feet in walking tread down, consume, trample upon, and spoil a little of the turnips, grass, and corn of the said Richard then growing in the said closes in which, &c. in the introduction to this plea mentioned, parcel, &c. doing as little damage there as on that occasion they possibly could, which are the same trespasses in the introduction to this plea mentioned; and this they are ready to verify; wherefore they pray judgment if the said Richard ought to have or maintain his aforesaid action thereof against them, &c.: And for further plea in this behalf 3d Plea. as to the breaking and entering the said closes of the said Richard in the said declaration mentioned called the Acre against the Fox Hill and the Yard upon the Hill, and the said two closes or pieces or parcels of ground in the said declaration mentioned to be respectively lying and being dispersedly in the said common field called Dean Field, and with feet in walking, and with hories, mares, geldings, bulls, cows, oxen, and sheep, part of the said cattle in the said new assignment mentioned, treading down, trampling upon, eating up, consuming, and spoiling the turnips, grass, and corn of the said Richard there then respectively growing and being, above newly assigned and above supposed to have been done by the said William and James, they the said William and James, by like leave of the court here for this purpose first had and obtained, according to the form of the statute in such case made and provided, say, that the said Richard ought not to have or maintain his aforesaid action thereof against them; because they say, that as well the said closes in the said declaration called the Acre against Fox Hill and the Yard upon the Hill, as the said closes or pieces or parcels of ground of the said Richard in the said declaration mentioned to be respectively lying and being

disperſedly in the ſaid common field called Dean Field are, and at the ſaid ſeveral times when, &c. above newly assigned, were, and from time whereof the memory of man is not to the contrary, hitherto have been part and parcel of the ſaid common field called Dean Field, and ſituate, lying, and being in the ſaid liberty of Eye and Dunſdon, in the ſaid pariſh of Sonning Eye in the ſaid county of Oxford, and long before and at the ſaid ſeveral times when, &c. the ſaid Charles Marſack was, and from thenceforth hitherto hath been, and ſtill is ſeiſed in his demefne as of fee, and in divers, to wit, one acre of land, with the appurtenances, lying and being in the ſaid liberty of Eye and Dunſdon, in the ſaid pariſh of Sonning Eye, in the ſaid county: And the ſaid William and James further ſay, that the ſaid Charles Marſack, and all thoſe whoſe eſtate he now has, and at the ſaid ſeveral times when, &c. had of and in his ſaid laſt-mentioned land, with the appurtenances, from the time whereof the memory of man is not to the contrary, have had and have uſed, and been accuſtomed to have, and of right ought to have had, and the ſaid Charles Marſack being ſo ſeiſed as laſt aforeſaid, ſtill of right ought to have for himſelf and themſelves, his and their tenants and farmers, occupiers of his ſaid laſt-mentioned land, with the appurtenances, for the time being, common of paſture for all his and their commonable cattle levant and couchant in and upon the ſaid laſt-mentioned land, with the appurtenances, whereof the ſaid Charles Marſack was ſo ſeiſed as laſt aforeſaid yearly and every year in manner following, that is to ſay, in, upon, and throughout the ſaid common field called Dean Field, whereof, &c. (his and their own land therein only excepted) in every year when the ſaid common field called Dean Field, whereof, &c. or any part thereof, hath been ſown with corn or grain from the time that all the corn and grain ſown in the ſaid common field called Dean Field, whereof, &c. hath been cut down and carried away from thence until the time that ſome part of the ſaid common field called Dean Field, whereof, &c. other than his and their own land therein, after ſuch part thereof hath been reſown with corn or grain, and before the ſaid corn or grain ſo reſown, or any part thereof hath been cut, or hath been hained up or fenced off to prevent ſuch cattle lawfully being in any other part of the ſaid common field called Dean Field, whereof, &c. from ſtraying and eſcaping into the ſame part ſo hained up or fenced off as laſt aforeſaid, and from that time in, upon, and throughout ſuch reſpective parts of the ſaid common field called Dean Field, whereof, &c. as afterwards have remained for any time not hained up or fenced off as laſt aforeſaid (his and their own land therein only excepted) until ſuch ſame (except as laſt aforeſaid) have reſpectively been ſo hained up or fenced off as laſt aforeſaid, after the ſame (except as laſt aforeſaid) have been reſpectively reſown with corn or grain, and before the ſaid corn or grain ſo reſown, or any part thereof hath been cut down, and every year when neither the ſaid common field called Dean Field, whereof, &c. nor any part thereof, hath been ſown with corn or grain

grain then in, upon, and throughout the said common field called Dean Field, whereof, &c. (his and their own land only excepted) at all times of every such year as to the said last-mentioned land, with the appurtenances, whereof the said Charles Marfack was so seised as last aforesaid, belonging and appertaining : And the said William and James further say, that the said Charles Marfack being so seised of and in his said last-mentioned land, with the appurtenances as aforesaid, before the said first time when, &c. to wit, on the fifth day of April, in the year of Our Lord 1785, at the parish of Sonning Eye aforesaid, in the county aforesaid, demised the same, with the appurtenances, to the said William, to hold the same to him the said William from the fifth day of April in the year last aforesaid for the space of one whole year then next following, and so on from year to year for so long time as the said Charles Marfack and the said William should please; by virtue of which said last-mentioned demise the said William afterwards, and before the first time when, &c. to wit, on the sixth day of April in the year last aforesaid, entered into the said last-mentioned land, with the appurtenances, and became and was, and from thenceforth hitherto hath been and still is possessed thereof : And the said William and James further say, that the said William being so possessed thereof as aforesaid at the said several times when, &c. all the corn and grain then last growing in the said common field called Dean Field, whereof, &c. having been cut down and carried away from thence, and the said closes in which, &c. in the introduction to this plea mentioned afterwards, not being nor having been, nor any part thereof being or having been hained up or fenced off as last aforesaid at the said several times when, &c. or any of them, he the said William in his own right, and the said James his servant, and by his command at the said several times when, &c. did put the said horses, mares, geldings, bulls, oxen, cows, and sheep, part of the said cattle in the said new assignment mentioned, being the commonable cattle of the said William and levant and couchant upon the said last-mentioned land so demised as last aforesaid into and upon the said closes in which, &c. in the introduction to this plea mentioned, parcel, &c. to be fed and depastured there and in the other parts of the said common field called Dean Field, whereof, &c. which were not then hained up or fenced off in manner last aforesaid, except the said William's own land therein, to use his same common of pasture there, and the said last-mentioned cattle at the said several times when, &c. the said closes in which, &c. in the introduction to this plea mentioned not being nor having been, nor any part thereof being nor having been at any of those times hained up or fenced off as last aforesaid, were in the said closes in which, &c. in the introduction to this plea mentioned, parcel, &c. feeding and depasturing the turnips, grass, and corn there then growing, and using the same common of pasture there as it was lawful to do for the cause in that behalf aforesaid ; and the said William and James, in so putting the said last-mentioned

TRESPASS.—REJOINDER to \

cattle into the said closes in which, &c. in the introduction to this plea mentioned, parcel, &c. as aforesaid, for the purpose last aforesaid, did necessarily and unavoidably with their feet in walking tread down, consume, trample upon, and spoil a little of the turnips, grafs, and corn of the said Richard then growing in the said closes in which, &c. in the introduction to this plea mentioned, parcel, &c. doing as little damage there as on those occasions they possibly could, which are the same trespasses in the introduction to this plea mentioned; and this they are ready to verify; wherefore they pray judgment if the said Richard ought to have or maintain his aforesaid action thereof against them, &c.

G. S. HOLROYD.

Replication to
plea to reply
assignment, and
issue on 2d and
3d pleas.

And the said W. and J. as to the said plea of the said Richard by him above pleaded by way of reply to the said plea of the said William and James by them secondly above pleaded in bar as to that part of the trespasses above newly assigned, as in the introductory part of that plea is mentioned and above supposed to be done by the said William and James as before, say, that the said Charles Marfack, and all those whose estate he now has, and at the said several times when, &c. had of and in his said last-mentioned land, with the appurtenances, in the same plea in bar in that behalf mentioned, from the time whereof the memory of man is not to the contrary, have had and have used and been accustomed to have, and of right ought to have had, and the said Charles Marfack being seised as last aforesaid still of right ought to have for himself and themselves, his and their tenants and farmers, occupiers of his said last-mentioned land for the time being, common of pasture for all his and their cattle levant and couchant in and upon the last-mentioned land, with the appurtenances, whereof the said Charles Marfack was so seised as in that plea aforesaid yearly and every year in manner following, that is to say, in, upon, and throughout the said common field called Dean Field, whereof, &c. (his and their own land therein only excepted) in every year when the said common field called Dean Field, whereof, &c. or any part thereof, hath been sown with corn or grain from the time that all the corn or grain sown in the said common field called Dean Field, whereof, &c. hath been cut down and carried from thence until the time that some part of the said common field called Dean Field, whereof, &c. other than his and their own land therein (after such part thereof hath been re-sown with corn or grain, and before the said corn or grain is re-sown, or any part thereof hath been cut down) hath been hained up or fenced off to prevent such cattle lawfully being in any other part of the said common field called Dean Field, whereof, &c. from straying and escaping into the said part so hained up or fenced off as aforesaid, and from that time in, upon, and throughout such respective parts of the said common field called Dean Field, whereof, &c. as afterwards have remained for any time not hained up or fenced off as aforesaid, his and their own land therein only excepted, until the same (except as

last

last aforesaid, have been respectively so hained up or fenced off as aforesaid, after the same (except as last aforesaid) have been respectively sown with corn or grain, and before the said corn or grain so resown, or any part thereof, hath been cut down, and in every year when neither the said common field called Dean Field, whereof, &c. nor any part thereof, hath been sown with corn or grain then in, upon, or throughout the said common field called Dean Field, whereof, &c. (his and their own land therein only excepted) at all times of every such year as to the said last-mentioned land, with the appurtenances, whereof the said Charles Marfack was so seised as last aforesaid, belonging and appertaining, in manner and form as the said William and James in their said plea so by them secondly above pleaded to the said new assignment as aforesaid in that behalf alledged; and of this they put themselves upon the country, &c. : And the said William and James, as to the said plea of the said Richard by him above pleaded by way of reply to the said plea of the said William and James by them thirdly above pleaded in bar as to that plea of the trespass above newly assigned, as in the introductory part of that plea is mentioned and above supposed to be done by the said William and James as before, say, that the said Charles Marfack, and all those whose estate he now has, and at the said several times when, &c. had of and in his said last-mentioned land, with the appurtenances, in the said plea in bar in that behalf mentioned, from the time whereof the memory of man is not to the contrary, have had, and have been used and accustomed to have, and of right ought to have had, and the said Charles Marfack being so seised as in that plea aforesaid, still of right ought to have for himself and themselves, his and their tenants and farmers, occupiers of his said last-mentioned land, with the appurtenances, for the time being, common of pasture for all his and their commonable cattle levant and couchant in and upon the said last-mentioned land, with the appurtenances, whereof the said Charles Marfack was so seised as last aforesaid yearly and every year in manner following, that is to say, in, upon, and throughout the said common field called Dean Field, whereof, &c. (his and their own land therein only excepted) in every year when the said common field called Dean Field, whereof, &c. or any part thereof, hath been sown with corn and grain from the time that all the corn and grain sown in the said common field called Dean Field, whereof, &c. hath been cut down and carried away from thence until the time that some part of the said common field called Dean Field, whereof, &c. other than his and their own land therein, after such part thereof hath been resown with corn or grain, and before the said corn or grain so resown, or any part thereof, hath been cut down, hath been hained up or fenced off to prevent such cattle lawfully being in any other part of the said common field called Dean Field, whereof, &c. from straying and escaping into the said part so hained up or fenced off as last aforesaid, and from that time in, upon, and throughout such respective parts of the said common field called Dean Field, where-

of, &c: as afterwards have remained for any time not hained up or fenced off as last aforesaid (his and their own land therein only excepted) until the same (except as last aforesaid) have respectively been hained up or fenced off as last aforesaid, after the same (except as last aforesaid) have been respectively resown with corn or grain, and before the same corn or grain is resown, or any part thereof, hath been cut down, and in every year when neither the said common field called Dean Field, whereof, &c. nor any part thereof, hath been sown with corn or grain then in, upon, and throughout the said common field called Dean Field, whereof, &c. (his and their own land therein only excepted) at all times of every such year as to the said last-mentioned land, with the appurtenances, whereof the said Charles Marlack was so seized as last aforesaid, belonging and appertaining, in manner and form as the said William and James have above in their said third plea to the said new assignment alledged; and of this they put themselves upon the country, &c.

G. Wood.

I N D E X.

GENERAL DIVISIONS OR HEADS, AND LEADING TITLES IN THE CIVIL DIVISION.

TRESPASS.

ANALYSIS.

TRESPASS.

I. DECLARATIONS in,

1. To PERSONS.

1. Assault.

2. False Imprisonment.

(1)

2. To PERSONAL PROPERTY—and PERSONS.—

Adultery, &c. See (TORTS of a Mixed Nature.)

(2)

3. To REAL PROPERTY—and PERSONS.

1. Ways.

2. Lands.

3. Watercourses.

4. Fisheries. ~~See~~

5. For Mine Profits and Costs in Ejectment. (See Ejectment.)

(3)

II. PLEAS in

1. DENIAL. (a)

1. Generally.

2. Specially, by denying plaintiff's marriage.

2. DISCHARGE.

1. Accord and Satisfaction.

2. Arbitrament.

3. Judgment.

4. Release.

5. Statute of Limitations.

6. Tender of Amends.

(26)

See

post.

3. EXCUSE and JUSTIFICATION OF TRESPASS to REAL and PERSONAL PROPERTY.

1. *Liberum Tenementum*. (Common Bar.) (5)

2. Title less than Freehold. (6)

3. Tenancy in Common. (7)

(a) Pleas in DENIAL and DISCHARGE (26) follow New Assignment (25), for convenience in the indexing.

4. Right of,

1. COMMON,

1. Of Eftover.
2. Fishery. (9)
3. Pasture.
4. Turbary, to dig, &c.

} (8)

5. WARREN, CHAFF, and PARK, &c. (10) **iv.**

6. WAYS and WATERCOURSES.

1. Public.
2. Private.

1. By Grant or Agreement. } (11)
2. Prescription.
3. Custom.
4. Necessity.

7. EASEMENTS, &c. not classed. (12) **lvi.**

8. By DEFECT of FENCES. (13)

9. RIGHT of ENTRY.

10. DISTRESSES, &c. for

1. By Occupier.
2. Commener.

1. Damage Feasant.
2. Rents, Services, Customs, Debts, Tolls, Fines, Amerciaments. **hail.** } (14)
3. For using Engines, &c. to destroy Game contrary to Law.

11. LICENCE,

1. In Fa&t. (15)

2. Law. **lxxvi.**1. To abate Nuisance. **lxxvii.**

2. Enter Taverns.

3. Take Implements to glean. **Qu.**

4. Take, retake, or demand his own Goods, Debts, &c. } (16)

5. Tithes.

6. To prevent Damage.

7. On other lawful Occasions, cutting Ropes, killing Dogs.

12. By Authority of Law and under *Legal Procefs.* (17)

4. EXCUSE and JUSTIFICATION.

2. To PERSONS.

1. By amicable Contest. **Qu.** (18) **lxxviii.**

2. Authority of Law,

1. Without Procefs, (19)

1. As Individuals.

2. Officers, and in Aid of them.

* Under Legal Procefs.

1. Civil

I. Civil. (20) —

1. Of Courts Superior. —

1. Mesne.
2. Final.

2. Of Courts Inferior. ~~(21)~~

3. Moderate Correction. (22) —

4. MOLLITER MANUS IMPOSUIT,
in Defence of

1. Real Property.
2. Personal Property.
3. To preserve Peace.
4. To prevent Mischief.
5. On other lawful Occasions.

(23)

5. SON ASSAULT DEMESNE, —
in Defence of

1. Self.
2. Third Persons.
3. Specially, with an *Irâ Motus*.

(24)

III. REPLICATIONS, &c. after their respective Pleas.

IV. NEW ASSIGNMENT, and Pleas thereto. (25)

I. TRESPASS TO PERSONS.

1. Assault.
2. False Imprisonment.

(1)

VOL.

IX.

Page

4. Declaration in B. R. for assault and battery, wounding, ~~making~~ false imprisonment, and tying plaintiff to a person who had got the itch, whereby plaintiff caught it. (*See Plea thereto, justification by officers by authority, of law, post.*)

11. Declaration in C. B. for assault and false imprisonment, charging plaintiff with the watch, causing him to be taken before a justice and to find bail for his further appearance.

15. Declaration in B. R. for an assault, beating plaintiff, cutting him about the head and eyes, so that he was deprived of the sight of his left eye. Plea, release.

16. Declaration by original against defendant, captain of a ship, for an assault on plaintiff, and also for selling him as a slave at the island of St. Helena, whereby he suffered very severe hardships, &c. flogged, &c.

18. Declaration by original against defendant, for making an assault upon plaintiff who was a mariner, beating him violently, whereby he became sick, and was prevented from returning on board his ship, lost his wages, and was forced to lay out a sum of money to procure another passage home.

20. Declaration for striking plaintiff with a whip, and spoiling his clothes:

21. Decla-

Vol.

IX.

Page

31. Declaration in B. R. for entering plaintiff's dwelling-house, beating him, and seizing and imprisoning him. (See Plea, justification under legal process, civil, *post.*)
32. Declaration in C. B. (writ part), for assaulting, knocking down plaintiff, and rendering him unable to leave on board his ship, whereby he was forced to quit and return home in another.
33. Declaration in C. B. (writ part), for assaulting and knocking down plaintiff, whereby he became sick.
33. Declaration for making an assault on plaintiff, whereby he lost several of his tenants who lived in his house, and conceiving that plaintiff merited the assault; and for dragging him over a wall, tearing his clothes, &c. (See Plea of *Mulder v. Mars* *Joinder* in Defence of Real and Personal Property, and *See Assault De-mesne*, *post.*)
- 34.

II. TRESPASS TO PERSONAL PROPERTY—and PERSONS. Assault, &c. (See *Index* of Mixed Nature.)

BREAKING DOWN BRIDGES, CUTTING ROPE, MOORING-CHAINS, (AND
ENTERING DWELLING-HOUSE.)

Vol.

IX.

Page

1. Declaration in B. R. for assaulting plaintiff and taking his gun. (See Plea thereto of justification by necessity of law.)
36. Declaration in C. B. for seizing plaintiff's goods, and detaining them, and converting them to defendant's use. Plea by two defendants, *non est*.
36. For entering defendant's house, seizing his dog, dragging it away, and hanging it.
37. Declaration in C. B. for breaking plaintiff's house, and making an affray therein, seizing his goods, and detaining them till replevied. 2d Count, breaking close, turning him out of possession, *per quod* plaintiff was prevented from following his business. 3d Count, for seizing and detaining his working tools.
39. Declaration in C. B. for breaking and entering plaintiff's salt works, seizing his stock in trade and utensils, working up the rough materials, carrying away the same, and disposing to their own use. (Various Counts.)
42. Declaration in B. R. for entering plaintiff's house, making an affray therein, assaulting his wife big with child, and beating her so that she miscarried, *per quod* plaintiff lost her society, and was put to great expence in the cure.
43. For breaking down plaintiff's bridge, cutting up the materials, and throwing them into the river, *per quod* they floated away.

Vol.

IX.

Page

43. Trespass *viet armari*, for cutting the plaintiff's chain fastened to his mooring chain in the river Thames and letting it fall to the bottom of the river, *per quod* plaintiff was put to great trouble and expence in recovering them.
44. Declaration in C. B. for entering plaintiff's house, assaulting his wife, breaking open cellar door, and taking away several butt. of beer.
45. Declaration in B. R. for seizing two silver tickets belonging to plaintiff, whereby he was prevented from getting admission into a public place of entertainment.
52. Declaration in B. R. for taking two anchors from on board a ship belonging to plaintiff.
53. Declaration in B. R. for entering and making a noise in plaintiff's house and taking his goods away. (See Plea, by authority of law, in *pleas*. Index, *post*. Replication and rejoinder.)

ASSAULT—*IN THE CIVIL DIVISION*

For making plaintiff of his life, and murthering him, and other injuries, that he could not go to labour and trade or his business, *M. L. 3. 6. 2. Lut. 1128. For. Int. 219.* Threatening plaintiff's life and to murther him, *Re. 651. 7. E. 4. 21.* Like, and assaulting plaintiff, *For. 202.* Assaulting and menacing plaintiff, *37. H. 6. 19.* Laying in wait to murther plaintiff, *Re. 102.* and assaulting, *Lut. Int. 59.* Defendant and others laying in wait to kill plaintiff, and murthering him, so that he could not attend to his ordinary concerns, *For. 211. 1. Br. 372.* For breaking house, assaulting and menacing life, and murthering plaintiff, and so murthering him that he could not go about his affairs, assaulting and terrifying his wife that her life was in danger, *per quod cognovit angra*; and defendant with her male another assault upon him and his servant, arrested and imprisoned him for a long space of time, *per quod position angra*, *Br. R. 285.* For assaulting, and digging a ditch, *Re. 107.* besieging his dwelling, that neither he, his men, or servants could have egress and regress, *Re. 95. For. Int. 43.* Following plaintiff into his house, and keeping him there till he took an oath, *Re. 99.* Assaulting and menacing plaintiff till he levied a fine, *Ibid. 108.* By an attorney, for laying in wait and menacing him, *Re. 661.* Menacing plaintiff's men and servants, so that plaintiff could not venture to come to his premises, or find his servants to do his work, *Ibid. 104.* For breaking plaintiff's close and house, and threatening servants with injuries at different times, *Ibid. 628.* For breaking house, assaulting, imprisoning, and detaining plaintiff in prison for the space of 24 hours, *3. Lev. 61.* Assault and imprisonment till he paid a fine, *Re. 646. Co. Ent. 393. 1. Br. 219. Re. Dec. 403. Bro. Met. 375. Pl. Gen. 616. 2. Lut. 913. 946. 919. 2. Br. 222.* and gave a bond, *Re. 93.* till he tendered an oath, *Ibid. 95.* released an action, *Ibid. 95.* granted a reversion of lands, *Ibid. 79.* made a lease, *Ibid. 108.* till he made a bond to the use of G. L. and paid or levied a fine, *Re. Dec. 474. Bro. Met. 375. Co. Ent. 298. Re. 93.* a bond, *Ibid. 303.* a release for money due on bond by defendant, *Re. 102.* For an assault and imprisonment at Fort St. George in parts beyond the seas, *viz.* at London, &c., *2. Lut. 612.*

For

INDEX TO LEADING TITLES OR HEADS

For breaking close and assault, imprisoning, and detaining plaintiff in prison, 2. *Bro.* 134.

For menacing plaintiff's life, and cutting him, and wounding him, so that he could not about his husbandry and other business, and assaulting, imprisoning, and detaining plaintiff, *Mo. Int.* 386. 2. *Lut.* 1428.

For taking plaintiff into D. and detaining him in prison there, and securing him like a thief, tying him upon gelding, and carrying him to W. and detaining him in prison there, 1. *Bro.* 221. *Ra.* 339. *Reg.* 96. For cruel and severe imprisonment for arrears of an account, putting him in the stocks, whereby he became lame, and for not permitting the necessaries of life to be administered to him, *Reg.* 96.

ASSAULTING, &c. SERVANTS—APPRENTICES—DAUGHTER, &c.

For beating and menacing servant, *Ra.* 661. 3. *Br.* 471. 2. *Inst. Cl.* 444. 2. *Lut.* 1496.

For taking upon plaintiff and servant, *Reg.* 109. upon his men and servants, *Ra.* 613. *Reg.* 102. 10. imprisoning and detaining him, 1. *Bro.* 221. and taking away his dog, *Kil.* 225. A hook, (*arundine falcata*), 9. *H.* 5. 9. Imprisoning.

Ra. 346. *Int.* 187. Against the warden of the Fleet, *Her.* 395. Menacing men servants and tenants, *Ra.* 652. Imprisoning servant till he paid a fine to defendant and another, *Her.* 395. Taking cattle and imprisoning servant, *Vet. Int.* 217. For debauching plaintiff's daughter, and getting her with child, *Bro. R.* 486. 2. *Inst. Cl.* 455.

Imprisoning and ill-treating daughter, 1. *Br.* 18. For *nativo*, or son and heir, taken out of his service, 22. *H.* 6. 30. For taking away *nativo* and assaulting his men and servants, *Reg.* 108. Taking away an apprentice, *Ibid.* 109. 21. *H.* 6. 31. Servant, 22. *H.* 6. 30. Assaulting and menacing men and servants, and so hurting them that they could not go to husbandry, or do plaintiff's other labour, *Reg.* 94. *Asb.* 434. *Tho.* 389. Hindering servants, *Reg.* 106. Breaking close, beating men and servants, and menacing, *Ibid.* 107. Close and house, menacing and hurting men and servants, *Ibid.* 111. and other trespasses, *Ra.* 648. 661. *Vet. Int.* 43. For the king, *Ra.* 662. Breaking close, menacing life, that servants could not go to make up hay, or about plaintiff's other work, *Tho.* 293. *Lev. Ent.* 15. *Bro. Vad.* 442.

2. *Inst. Cl.* 447. Chafing horse and menacing servant, 2. *Bro.* 260.

Reg. 106. Breaking close, beating men and servants, and menacing, *Ibid.* 107. Close and house, menacing and hurting men and servants, *Ibid.* 111. and other trespasses, *Ra.* 648. 661. *Vet. Int.* 43. For the king, *Ra.* 662. Breaking close, menacing life, that servants could not go to make up hay, or about plaintiff's other work, *Tho.* 293. *Lev. Ent.* 15. *Bro. Vad.* 442.

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Imprisoning and ill-treating daughter, 1. *Br.* 18. For *nativo*, or son and heir, taken out of his service, 22. *H.* 6. 30. For taking away *nativo* and assaulting his men and servants, *Reg.* 108. Taking away an apprentice, *Ibid.* 109. 21. *H.* 6. 31. Servant, 22. *H.* 6. 30. Assaulting and menacing men and servants, and so hurting them that they could not go to husbandry, or do plaintiff's other labour, *Reg.* 94. *Asb.* 434. *Tho.* 389. Hindering servants, *Reg.* 106. Breaking close, beating men and servants, and menacing, *Ibid.* 107. Close and house, menacing and hurting men and servants, *Ibid.* 111. and other trespasses, *Ra.* 648. 661. *Vet. Int.* 43. For the king, *Ra.* 662. Breaking close, menacing life, that servants could not go to make up hay, or about plaintiff's other work, *Tho.* 293. *Lev. Ent.* 15. *Bro. Vad.* 442.

2. *Inst. Cl.* 447. Chafing horse and menacing servant, 2. *Bro.* 260.

ASSAULT—DISTURBANCE.

Declaration by an earl for disturbing the office of constable of several lordships and manors, granted to plaintiff by the king for life, *Br. R.* 483. Disturbing and disquieting plaintiff in his house, and hindering a bailiff in the execution of a writ, *Cliff.* 738.

For hindering plaintiff from *pria* of cattle, *Vet. Int.* 154.

Hindering plaintiff's men and servants in collecting toll in a fair, granted to plaintiff by deed, *Reg.* 103. Assaulting servants deputed to collect toll in a fair, granted to prior by deed, and carrying away goods in the name of a distress for toll, *Reg.* 103.

For breaking cattle and house, and hindering servants from holding court and to levy amerancements, court fees, and rents, and hindering men and servants from husbandry, *Reg.* 106. For taking cattle for a distress within the honor in which plaintiff has execution and return of writs, and driving them out of the honor, *Ibid.* 104.

ASSAULT.

Assault for *frankalmo*, taking and imprisoning plaintiff taken under a protection, *Da.* 38. For an assault, beating, getting him drunk, and imprisoning and detaining

- taining for ten hours. Carrying plaintiff to a bed, putting her into bed, and lying with her, *Bro. R. 505.*
- For an assault upon the wife, then an infant and unmarried, with intention to compel her by threats to marry defendant, *Re. Dec. 402.*
- For imprisoning plaintiff till he granted his interest in two salaries, delivered writings, gave a bond, and took an oath before a notary, *Reg. 109.* Taking away a discharge for a debt due by statute merchant, according to a defeasance to be paid, assaulting plaintiff, and causing him to be taken on the said recognizance, and detained till he made another, and released all actions, *Reg. 100.*
- For taking plaintiff under pretext of a sheriff's warrant in an action of conspiracy, for that plaintiff was a witness upon the indictment and against imprisoning him till he paid a fine, *Reg. 99.* Taking and imprisoning plaintiff at L. carrying him to E. and taking his goods and chattels at L. and detaining them till he found bail that he should not depart, nor cloign the goods, *Reg. 106.* Taking plaintiff in one county and carrying him into another, imprisoning there till he paid a fine, *Ibid. 108.*
- For an assault upon plaintiff, *Theo. 293. 396. 421. 1. San. 10. Mo. Intr. 385. 2. Bro. 136. 138. 142. Re. Ent. 461. 464. 2. Lut. 1435. 1481. 3. Lev. 109. 1. Inst. 187. 330. Bro. Vad. 413. Re. Dec. 404. Han. 223. Ra. 612. Co. Ent. 643. Reg. 93. Vet. Int. 10. Tref. 91.* By an attorney, *Mo. Lut. 385.* Against a servant of one of the clerks of the court of chancery, *2. Lut. 146.* Against husband and wife, for an assault by the wife, *2. Bro. 425. Her. 393.*
- For assaulting plaintiff, a constable, *Theo. 331.* For a violent assault and battery, *2. Inst. Cl. 446. Han. 212.*
- For laying in wait with other persons to kill plaintiff, and making an assault, plaintiff was so grievously hurt as not to be able to go about his business, *Theo. 291. Ra. 610.* For assaulting, beating, wounding, and maiming of plaintiff, *Ibid. 43. Aff. 39.* Assaulting and wounding plaintiff on the back part of his left leg (hocking), *1. Br. Rep. 206.* Wound in her shoulder, *Upp. 221.* Putting out an eye, *Reg. 96. Her. 495.* Throwing hot water over plaintiff, *Reg. 108.*
- For an assault upon the wife, to the damage of the wife only in the writ, but of both in the declaration, *2. Lut. 1458.* By husband and wife, for an assault on the wife, *Ra. 610. 668.* For striking the wife, *Ant. 256.* By husband and wife, for assaulting the wife and taking husbands goods, *Reg. 105.* Against husband and wife, for an assault upon the wife, *Her. 393.*
- For an assault upon servants, *per quod* they could not go about their lawful business, *2. Lut. 1496. Reg. 109.*
- For throwing a heated mass of iron at plaintiff, *Reg. 98.* Inciting a dog to bite plaintiff, *Reg. 97. 3. Br. 473.* Driving a carriage with six horses over plaintiff, thrown down and two of his ribs broken, *1. Br. 166.*
- Against defendant, for that he with others came into a room, made an assault upon him and his wife, and servant, and arrested and imprisoned, *2. Inst. Cl. 453.*
- For assault, imprisonment, and detaining plaintiff in prison, *1. Bro. 218. Theo. 336. Bro. R. 477. 2. Lut. 944. Lev. Ent. 191. Bro. Met. 375. 2. Inst. Cl. 452. Ra. 389. 1. Br. 172. Upp. 155. 3. Br. 216.* For an attorney, by attachment of privilege, *3. Br. 399.* For detaining, *Reg. 93.* Taking and holding plaintiff, *Ra. 401.* and imprisoning him, *Reg. Jud. 11.* Taking, imprisoning, and ill-treating, *Co. Ent. 305. 8. Co. 107. 1. Br. 168.* for the space of a month, *2. Vent. 189. Lev. Ent. 205. 2. Mo. Ent. 308.* Assault and detaining plaintiff in prison, making no mention of the imprisonment, *2. Bro. 145.* till he paid forty shillings, *Theo. 367. Re. Dec. 403. 2. Lut. 946.* Without reasonable cause, and against law, *Bro. R. 487. Bro. Met. 375. Pl. Gen. 620. 2. Lut. 925. 935.* By an attorney, for being put in the stocks, *1. Bro. 218.* For detaining plaintiff in the stocks, *Cl. Man. 378. 2. Inst. Cl. 457. Her. 394.*

INDEX TO LEADING TITLES OR HEADS

PERSONAL PROPERTY.---(LANDLORD AND TENANT)---DISTRESS---ENTERING DWELLING-HOUSE.

Vol.

IX.

Page

79. Declaration in B. R. for destroying a book and seizing goods. (*See* Plea, by authority of law. General Officer.)
84. Declaration in B. R. in trespass, by *tenant against his landlord*, for distraining when no rent was due to recover double the value of the goods distrained, under 2. W. and M. c. 5. f. 5.
85. Declaration in C. B. in trespass, for *hunting a mare*, whereby she dropped a dead foal.
87. Declaration in B. R. for taking plaintiff's goods in execution. (*See* Plea, under civil process, *post*.)
110. Declaration in B. R. in trespass, for *pound breach*, and taking out defendant's cattle, which plaintiff had impounded, having taken them damage *assumpsit*.---*Qu.* If the Count for pound breach can be joined with trespass on the common, *vide*.

PERSONAL PROPERTY AND PERSONS.---ADULTERY, &c.---*See* TORTS OF A MIXED NATURE.

12. Declaration for *debauching plaintiff's wife* and setting her with child, *per quod* plaintiff was put to great expence in delivering her.
13. Declaration in C. B. for criminal conversation with the plaintiff's wife. Plea, accord and satisfaction. Replication.
20. Declaration in B. R. for entering rooms, carnally knowing his wife, and carrying her away by force.

For assaulting and taking away plaintiff's wife, with goods and chattels, 2. *Inst.* Cl. 4; 1. By husband and wife, for an assault on the wife and taking husband's goods, *Reg.* 105. Wife's goods whilst sole, *Ra.* 641.

For taking cattle for a distress within the honor in which plaintiff has execution and return of writs, driving them out of the honor, *Reg.* 104.

For breaking a mill stone, *Reg.* 96. *Excei.* of an abbot within the liberty, *Ibid.*

108. Breaking down a pillory, taking the timber, and not permitting another to be erected, *Ibid.* 109. *De pressura*, by breaking *stifera* and carrying away timber, *Ibid.* 108. Dove-house and taking pigeons, *Ibid.* 104.

Breaking stocks and taking out thereof *nativo*, *Ibid.* 95. Pipe of wine, 1. *Br.* 175. Wine drawn out of the cask and filled with salt water, *Ibid.* 95. Breaking open plaintiff's lamper and taking thereout hares and pheasant cocks, 2. *Inst.* Cl. 445. Killing a re-claimed hawk, *Tho.* 292. Taking swans, 7. *Co.* 16. Birds, *Reg.* 110. By husband and wife, for the young of swans belonging to wife when sole, *Vet. Int.* 220. Striking a hawk and killing, 1. *Cro.* 13. 18.

IN THE CIVIL DIVISION.

TRESPASS TO PERSONAL PROPERTY AND PERSONS.

Vol.

IX.

Page

56. Declaration in B. R. for taking and impounding plaintiff's pigs. (*See* Plea, Distresses, Damage tenant, Index, *post*. by occupiers.)
61. Declaration in B. R. for gathering plumbs, and converting them.
61. For shooting a dog.
61. For *assaulting* plaintiff, throwing down his stall on which were divers cakes, *per quod* some were lost and others broke.
62. Declaration in C. B. for beating, wounding, and killing plaintiff's gelding.
63. For knocking out the eye of a greyhound.
63. For chasing sheep with dogs, whereby divers died, and others became rotten, and the residue greatly hurt.
64. For shooting plaintiff's greyhound.
64. Declaration in B. R. by a brick-maker, against the father and his daughter, about ten years of age, for spoiling plaintiff's bricks.
65. Declaration in C. B. at Lancaster, for shooting one of plaintiff's hounds in pursuit of a hare. (*See* Plea, by Authority of Law---Gamekeeper, *post*.)
240. Declaration for breaking and entering close, destroying fences, throwing down gates, breaking staples, locks, chains, and hinges. Plea. (*See* Right of Way, private, *post*.)
314. Declaration for sawing a spout leading from plaintiff's corn-chamber to his steep-vat, for the purpose of conveying grain. (*See* Plea---Licence in Law---to Abate Nuisance---*post*.)
87. Declaration for breaking and entering dove-cote, and taking thereout doves.

For taking away a cow, and assault, *Wi. Ent.* 984. For an assault, and carrying off goods, 2. *Bro.* 139. Assault, and taking goods and chattels, 2. *Lut.* 1320: 1344. 2. *Mo. Int.* 309. Assault, and taking away spiced cakes, 2. *Lut.* 1374. Spoiling goods and chattels, *Lev. Ent.* 215, *Bro. Vaa.* 442. 2. *Ipsl. Cl.* 447. Assault, and chasing cattle, *Cliff.* 723. Carrying away goods, and assaulting plaintiff's servant, *Ibid.* 739. For carrying away goods, *Wi. Ent.* 45.

For taking and detaining beasts of the plough of plaintiff's servants, not permitting them to be replevied, and menacing the tenants so that they left their estates, *Reg.* 104. Assaulting cart and horses, and detaining, *Ra.* 661. An ox and cow, *Reg.* 102. "Wool," and detained so long could not be delivered according to contract, 42. *E. 3. 6. Dig.* 262. Horse and goods, till he paid a fine, *Reg.* 94. Ship, and wares coming to a fair (*firiam*), *Ibid.* 102. 105,

DEEDS---BONDS.

For carrying away a bag with deeds, *Ra.* 616. Deeds and other muniments, *Reg.* 106. Tearing, 3. *Br.* 173.

For breaking a house and carrying away a bond and chest locked, *Wi. Ent.* 1007. Bond taken, and breaking seal, 1. *Bro.* 338. Tearing bond delivered to defendant to inspect, *Ibid.* 338. And cancelling, *Tho.* 294. three bonds, *Bro. Met.*

Vol. IX.

INDEX TO LEADING TITLES OR HEADS

374. 2. *Inst. Cl.* 449. Indenture of apprenticeship, *Chf.* 704. Breaking house, and taking bond, *Ibid.* 716. Forging a will, *per quod* plaintiff lost administration, *Cl. Man.* 381. Forging last will, and making no mention of a legacy bequeathed to plaintiff, *Ibid.* 385. Breaking close, treading down grass, and cancelling a lease, *Bro. Vad.* 406. And cancelling bond, *Bro. Met.* 574. Tearing bond, 2. *Inst. Cl.* 449. *Han.* 220.
By husband and wife, for breaking open wife's chest, and carrying away bond. *Reg.* 95. By church-wardens, for earing an annuity deed in their custody, and breaking the seal, *Ibid.* 106. Against an abbot and monks, for a deed by which they were held to maintain plaintiff in food and clothing till marriage, *Ibid.* 94.

VOL. IX.

For breaking close, house and chest broken open, carrying away sheep, and goods and chattels there found, and deeds, writings, and other muniments in the chest, *Reg.* 110.

For a will for affirmance of title brought into court in an assize, taken away, *Reg.* 107. Deed delivered to be inspected or kept; *Ibid.* 92. *Vet. Int.* 163. By the heir, for tearing a bond delivered to defendant by plaintiff's father to be kept, *Reg.* 106.

CATTLE--SHEEP---(IMPOUNDING).

Trespass for striking, driving horses, and impounding for a long time, 3. *Br.* 419. Cattle, till fine paid, *Her.* 718. Horses impounding, *Co.* 663. By parson and church-wardens, impounding for a long time, *Ra.* 619. Cattle taken under pretence of not prosecuting a plaint in a replevin, by bailiff of an inferior court, after plaint removed by force, *per quod* they were impounded without food--perished, *Reg.* 99.

Trespass, for driving and striking sheep, so that they were much hurt, 3. *Br.* 444. an ox, *Ibid.* 461. cattle. *Ibid.* 471. Plaintiff's sheep, taking out of his close, and driven into bad pasture, and maliciously detained there so long that sheep became infected and died, 1. *Br.* 165. Striking horse so grievously that he could not work. *Ra.* 614. Striking mare so grievously that she died, 3. *Br.* 457. Striking, labouring, and fatiguing horse, that he was much hurt, *Ibid.* 424. Beating gelding, striking on the eye, whereby he lost his sight, *Ibid.* 473. Taking gelding, and riding him, *Her.* 71. So immoderately riding and working, that he became weak and of no value, 3. *Br.* 452. Taking, leading away, and fetlocking a colt, whereby he was much hurt, 1. *Br.* 179.

Trespass, taking cattle in one county, driving into another, and there impounding; part died, rest hurt, 1. *H.* 5. 3. Driven, but not taken, 1. *H.* 5. 3. Driving pigs with dogs, that they died, 1. *Br.* 176.

For taking and carrying away a nag, colt, filley, steer, heifer, and bulls, 2. *Lut.* 1297. Driving to places unknown steers, heifer, and cow, *Ibid.* 1324. Calves, driving and chasing them, *Ibid.* 1372. Cow taken at S. driven to D. there impounded till fine paid, *Bro. R.* 478. 2. *Ven.* 91. 2. *Lut.* 1351. 3. *Lev.* 194. *Chf.* 713. *Re. Dec.* 408. *Ro. Ent.* 453. 2. *Inst. Cl.* 440. A cow and calf taken, *Reg.* 2. *Lut.* 1309. Three cows taken, and impounded for a long time, *Ibid.* 1573. Breaking close, and taking cow, *Tho.* 419. Impounding without reasonable cause, *Wi. Ent.* 977. *Bro. R.* 478. *Bro. Vad.* 410. Taking, detaining, and milking plaintiff's cows. *Han.* 217. Taking, and detaining a cow a long time, 2. *Lut.* 1353. Violently driving till she died, *Bro. R.* 496. Keeping a heifer accustomed to strike at mankind and animals, that bored plaintiff, *Tho.* 40.

Taking and carrying away a gelding, *Mo. Int.* 377. losing him, 2. *Lut.* 1361. 1461. A Mare, and immoderately riding, so that she died, *Tho.* 293. 2. *Inst. Cl.* 441. Leaping a mare over a hedge upon a thorn, *per quod* she died, 7. *ho.* 293. Taking a mare, and converting her to defendant's use, 2. *Lut.* 1524.

Assault

IN THE CIVIL DIVISION.

Assaulting plaintiff, and striking mare so grievously that she died, *Mo. Int.* 360. Chasing mare, and threatening servants, 2. *Bro.* 260. Chasing mare, and macing servant, *Ibid.* 260. Taking, &c. mare, with *continuando*, *Mo. Int.* 218. Chasing and hurting mare, *Tbo.* 378. Taking, and impounding cattle, without reasonable cause, 1. *Bro.* 338. *Tbo.* 362.

For cattle distrained in the highway without royal authority, 1. *Bro.* 337.

Taking, and impounding two oxen, *Tbo.* 267. cattle, till fine paid, *Wi. Ent.* 90. *Rob.* 453. gelding, 2. *Bro.* 283.

For breaking close, and driving sheep to bad pasture, and detained them so long there that they perished, 1. *Bro.* 337.

For assault on plaintiff, and taking a ram, *Bro. Vad.* 426. ~~abundant~~

For taking sheep and lambs without reasonable cause, and impounding so long without food that the sheep produced abortion, and part of the lambs perished, and residue made worse, 1. *Bro.* 338. *Tbo.* 293.

CATTLE--SHEEP---NOXIOUS ANIMALS.

For taking, and chasing lambs, 2. *Lut.* 1377. *Lea. Ent.* 209, 212. Taking sheep, *Ra.* 670, *Reg.* 95. and lamb, *Ra.* 683. Taking, and impounding colts, without reasonable cause, contrary to law, 2. *Lut.* 149. Cattle taken without reasonable cause, and so long impounded in an unknown place without food, that part perished, and residue hurt, *Wi. Ent.* 1002. *Mo. Int.* 308. Sheep, *Wi. Ent.* 1002. 2. *Bro.* 269. 2. *Lut.* 1447. So violently wounded and struck, chased and bitten by dogs, that forty died, and sixty cast their lambs, and residue hurt, *Clif.* 705, 723, 706.

For shearing and cutting tails of colts, *Clif.* 707 724. *Re. L. c.* 458.

For taking, carrying away, and selling a cow, *Clif.* 711. Taking an ox, *Co. Ent.* 616. *D.* 199. Oxen and boar, *Reg.* 110.

For chasing cattle and other trespasses, *Clif.* 731. Taking three naves, killing one, impounding the others, that died for want of food, *Clif.* 730. Taking, and impounding sheep, not permitting them to be replevied, *per quod* plaintiff lost his sheep, *Lea. Ent.* 187. Taking and carrying away sheep on several days, *Re. Dec.* 405. Chasing plaintiff's gelding to places unknown, and lost, *Ibid.* 413. Striking, wounding, and chasing sheep, by which they became much hurt, 2. *Mo. Int.* 306. 2. *Inst. Cl.* 440.

For breaking and entering his close and house, and killing plaintiff's hog, *Han.* 218. Driving plaintiff's mare out of his common, *Ibid.* 222. Chasing an ox, and impounding without reasonable cause, *per quod* he became much hurt by being detained so long, 1. *Bro.* 329. Taking ox of intestate in the custody of administrator, *Ibid.* 337. Taking, and impounding steers, *Rob.* 470. Striking and chasing cattle, by which they were hurt, 1. *Bro.* 329. *Tbo.* 204. 2. *ut.* 1394. 1496. Taking a filly, and fetlocking her so long that, &c. *Bro. R.* 476. Chasing sheep, 1. *San.* 220. Cattle out of the parish, *will.* or hamlet, *Tbo.* 294. Taking gelding, working him so hard at the plough that he was much hurt, 1. *Bro.* 338. A mare, and working her so hard, &c. 2. *Bro.* 272. Chasing a sow with dogs, sow bitten and died, 1. *Bro.* 329. Hunting swine with dogs, and tearing off their ears, 2. *Inst. Cl.* 448. *Han.* 221. Chasing gelding with dogs, inciting to bite horse, in taking a gate was so wounded that he died, *Tbo.* 343. Driving a gelding beyond the close to places unknown, and plaintiff lost him, *Ibid.* 293. Chasing oxen and horses drawing a cart with hay, and throwing about the hay, 1. *Bro.* 431.

For immoderately striking, wounding, driving, and chasing oxen, cows, and heifers, so that they were much hurt, 2. *Lut.* 1394. Gelding and man, and breaking the gelding's leg, *Ibid.* 1410. Whereby horses became untraversable, *Ibid.* 1367.

For striking a bull-dog, so that he died, 1. *San.* 82. 2. *Lut.* 1494.

INDEX TO LEADING TITLES OR HEADS

Killing two hounds, 3. *Lev.* 25. *Clif.* 704. 735. *Mo. Int.* 307. Killing and carrying away a tame fawn, 2. *Lut.* 1359. *Han.* 280.
 Carrying away a hound, *Heb.* 283. 12. *H.* 8. 3. 5. A tame fawn, *Dy.* 306.
 Beating servant, and taking away a blood-hound, *Kit.* 225. Keeping dogs to kill sheep; lambs and sheep so bitten that part died, residue much hurt, *Wi. Ent.* 1004. *Cl. Man.* 388. 2. *Mo. Int.* 307. 2. *Inf.* *Cl.* 450. *Han.* 220.
 For breaking house and stable where the horse was put with a mare; the horse broke the halter, and the mare kicked him, *per quod* the horse languished and died, *Mo. Int.* 385. Taking a horse from plaintiff, 2. *Crp.* 46. Keeping a bull-dog accustomed to bite cattle, that bit plaintiff's horse so grievously that he died, *Rob.* 20. 23.
 Taking a horse from plaintiff, 1. *Br.* 75. on several days, *Ibid.* 165. horse, *Ra.* 129. 672. horse and cows, *Ibid.* 605. Oxen taken, and eating up corn and grass, *Ibid.* 628. Goods carried off with cattle, *Ibid.* 640. horses and oxen, *Ibid.* 673. oxen, *Co. Ent.* 615. Taking cattle, and assaulting, 3. *Br.* 402.
 Impounding horse, 8. *H.* 6. 18.
 Breaking pound, and taking cattle, 18. *E.* 4. 25. without reasonable cause, *Reg.* 97. driving to places unknown, and not permitting them to be replevied, *Ibid.* 92. so that plaintiff could not find them to replevy, *Ibid.* 97. 102. 2. *Inf.* 141.
 Taking cattle against plaintiff's will, to draw a carriage, *Reg.* 98. Taking cattle, being in plaintiff's custody to keep, *Vet. Int.* 188. 11. *H.* 4. 17. 24.
 Defendant's cattle, delivered to plaintiff to depasture for a certain time, taken by defendant before time ended, *Reg.* 92. Defendant's bull, delivered by him to plaintiff on certain conditions, to be kept for his own advantage for a certain time, clandestinely taken away.

DISTRESS.

Trespass by lord of the manor, for taking waif and estray, *Reg.* 101. *Vet. Int.* 49. *Ra.* 638. By keeper of a hundred of the king, 1. *Br.* 190. For carrying away a bull, *Reg.* 109. Killing a horse and cow, *Ibid.* 109. An ass and foal, *Ibid.* 94. A dog, *Ibid.* 109.
 Trespass by tenant to prior, for distraining cattle for toll, contrary to the deed, *Ra.* 674. Distraining horse of prior, by a contract made with predecessor, *Reg.* 100. By patron of a church, for distraining cattle in the fee of the church, *Ibid.* 100. Attaching cattle, by contract made with defendant out of the bailiwick, *Ibid.* 98. *Prohibition* thereupon, that cattle be not attached, *Ibid.* 98.
 Distraining cattle in the highway or out of the liberty, *Ibid.* 97. Beasts of the plough, or sheep, *Ibid.* 97. Cattle, goods, and chattels taken in the highway, *Ibid.* 98.

IMPOUNDING.

Trespass, for taking cattle, and impounding them without reasonable cause, *Co. Ent.* 272. *Reg.* 94. 11. *H.* 4. 24. 1. *H.* 6. 7. *Aff.* 447. Beasts of the plough, *per quod* land remained uncultivated, *Reg.* 95. Taking cattle at N. chasing them into another, and detaining them there impounded, *Reg.* 97. Taking sheep at A. chasing them into B. and impounding there till fine paid, *Ibid.* 96. 1. *Br.* 176.
 Trespass, for taking cows at M. chasing to A. and impounding so long that they cast their lambs, *Reg.* 92. That sheep perished for want of feed, *Ibid.* 92. *Dig.* 180. Part died, residue hurt, *Ibid.* 93. Horses, *Ibid.* 94.

NOXIOUS ANIMALS.

Trespass, for driving a boar, and inciting a bull-dog to bite, whereof he died, 1. *Br.* 247. Sheep and swine pursued by dogs, that sheep cast their lambs, *Reg.* 92. Whereby

IN THE CIVIL DIVISION.

Whereby part died, and rest much hurt, *Ibid.* 92. Pigs, *Ibid.* 97. Part of sheep cast their lambs, and rest hurt, *Ibid.* 94. Sheep hurt, and great part of their lambs, *Ibid.* 97. Pursuing cows with dogs, that part died, and rest cast their young, *Ibid.* 90. pursuing sheep with dogs, some died, others cast their lambs, and rest hurt, *Ra.* 616.

Trespass, for inciting dog to bite plaintiff, *Reg.* 97. whereby plaintiff lost sight of his eye by a bite in the face, 3. *Br.* 473. A dog accustomed to bite, that bit plaintiff, *Reg.* 111. A horse accustomed to kick, struck plaintiff, broke his arm, and killed another horse, *Ibid.* 106. Dogs biting sheep, part died, and remainder hurt, *Ibid.* 110. 1. *Br.* 247. biting sheep, that died, *Ra.* 616. *Vet. Int.* 49. *Upp.* 229. Lambs much hurt, 1. *Br.* 180. Sheep and lambs, *Upp.* 229. *Aff.* 15. Part of sheep dying by being bitten and driven, part cast their lambs, and remainder hurt, *Upp.* 230. A boar accustomed to strike, *Reg.* 111. A sow accustomed to bite, biting and devouring plaintiff's sheep, lambs, and geese, 3. *Br.* 473. A dog kept by an inn-keeper, biting plaintiff's horse so that he died, *Her.* 249.

GOODS.

Trespass, for taking goods, *Tho.* 357. *Rob.* 476. *Mo. Int.* 377. *Bro. R.* 497. *Lev. Ent.* 179. *Ra.* 615. 635. 663. 667. 676. 681. *Vet. Int.* 44. *Reg.* 108. Detained for a long time, whereby profit lost, 2. *Lut.* 1452. *Lev. Ent.* 175. *Dig.* 263. Taking and carrying away an anchor and cable, *Lev. Ent.* 214. Ship and goods, *Reg.* 95. 102.

Trespass, for breaking a house, and carrying away a silver cup, *Wi. Ent.* 973. Close and house, and carrying away goods, *Ra.* 606. 619. 675. 615. *Vet. Int.* 217. Eating up grass, *Ra.* 632. Leading away cattle, *Ibid.* 640. Cattle and goods, *Ibid.* 657. *Tho.* 359. 400. 2. *Bro.* 271. 281.

Trespass, for taking and carrying away a gold chain and *uno pallio*, *Bro. Vad.* 440. For breaking close, and taking and carrying away goods and chattels, *Tho.* 40. 2. *Lut.* 1320. 1344. 1385. 1509. *Cl. Aff.* 433. *Han* 205. Several trespasses, and goods taken, &c. *Wi. Ent.* 971. Taking, &c. chest with goods, and keeping till fine paid, *Ibid.* 987. *Her.* 133. Breaking stable, and carrying away harness, *Han.* 217.

Taking, &c. a cart load of lead, and converting, &c. 2. *Lut.* 1017. 2. *Inf. Cl.* 448. *Han.* 218. Two tin plates, 2. *Lut.* 1320. *Brasfo.* *Ibid.* 1329. *Uno caldario abeneo*, and *uno batillo cubiculario*, *Ibid.* 1369. Spiced cakes, *Ibid.* 1374. Pears and apples, 19. *H.* 6. 51. Shoes and tanned leather, 2. *Lut.* 1402. *Bro. Vad.* 431.

For breaking house, and detaining cloth, *silo* and *serico*, therein from plaintiff, and continuing possession of house for a long time, 2. *Lut.* 1452. Destroying furniture, and destroying other goods, *Ibid.* 1483.

For taking and carrying away fifty tods of wool, and forty pack-cloths, 2. *Lut.* 1493. Three baskets of wheat, three of barley, three of pease, *Ibid.* 1498. Five bolts of iron, one cask of *picis*, four tables (*abiagnis*), and two salt cellars, *Ibid.* 1519. Vessel filled with wine, *Tho.* 291. *Han.* 221. Cask of cider, 2. *Lut.* 1529. Taking goods which were in plaintiff's custody, *Wi. Ent.* 1006. *Ra.* 682.

For breaking house, taking and carrying away goods, and carrying away other goods without reasonable cause, and detaining till fine paid, *Mo. Int.* 382. *Ra.* Dec. 414. Breaking close doors and spoiling them, taking, &c. goods and chattels, 2. *Lut.* 1509. Fourteen pewter plates, 3. *Lev.* 276. Puncheon of oil, *Clif.* 708. Money, *Ibid.* 708. Tomb stone, *Ibid.* 709. Iron utensils, *Ibid.* 709. Pieces of a fir tree, *Ibid.* 709. Liquors, *Ibid.* 710. Pieces of meat, *ib.* 712. Brecking close and house, taking, &c. corn threshed, straw, &c. *Clif.* 714. Timber, *Ibid.* 724. Throwing down bottles of wine, by which they were broken, *Ibid.*

INDEX TO LEADING TITLES OR HEADS

739. Taking and carrying away plaintiff's goods and chattels, and taking and driving away his live cattle, *Han.* 210. Brine or salt water out of the boiler or salt pan, *Ibid.* 221.

For taking excessive toll, *Ra.* 675. *Vet. Int.* 170. By church-warden, for taking goods, *Dig.* 19. *Custos breviarum*, for *bundellis* taken, 1. *Br.* 251. Taking *mona vel libro* by night, *Reg.* 91. Taking goods when plaintiff had a protection, *F. N. Br.* 92. Shearing sheep and taking wool, *Reg.* 95. Goods and money, *Ibid.* 95. 110. Money, *Ibid.* 108. *Florenis* of gold, *Ibid.* 102. Bag with money, *Dig.* 195. 13. *H.* 4. 11. 19. *Il.* 6. 48. Heap of money, containing five marks, 2. *Cro.* 3. 6.

For breaking house and taking money, *Vet. Int.* 44. Chest and money, *Ra.* 614. Chest, and goods, and money, *Ra.* 705. Chest with goods, till fine paid, *Her.* 733. Breaking house, and goods burnt, *Ra.* 653. Lord of the manor, for goods waived, *Reg.* 100. 102. Wrecked, *Ibid.* 102. 5. *Co.* 106. By an abbot, for goods of felon taken, granted to him by deed, *Reg.* 101. Goods, taken by defendant, together with other suspected persons, *Ra.* 683. *Dig.* 177. Not good, the *trespass* is merged in the *felony*.

TITHES.

For hindering parson of a church, on their way, to carry away *tithes*, and assault in servants, 2. *Bro.* 280. *Reg.* 105. 1. *Br.* 187. By vicar, *Br. R.* 482. Taking corn set apart for tithes, 1. *Bro.* 139. *Co. Ent.* 578. 685. Hay, *Ibo.* 293.

WILFUL AND MALICIOUS.

For taking goods and burning them, *Mo. Int.* 38. Burning a house, *Ra.* 607. 2. *H.* 118. House with goods burnt, *Reg.* 110.

For entering into plaintiff's house and close with other persons, arrayed in a warlike manner, and carrying away goods, 1. *Bro.* 353.

For maliciously oversetting a ship on the sea, and thereby lost goods and merchandizes, *Tho.* 251. Oversetting a barge in the river Thames, *Ibid.* 352. fo.

For negligently driving a chariot with two horses, that run over plaintiff with the carriage, and he was lamed, *Bro. R.* 484.

For breaking house, burning coals, and corrupting the dead body of a rhinoceros boiled in *caldaria cupada*, and put into a wooden vessel, *per quod caldaria* and the wooden vessel were spoiled, *nil dicit, Bro. R.* 492.

For husband and wife, against a servant, for putting poison into the wife's food, *Reg.* 62.

Assaulting plaintiff, beating and ill-treating plaintiff's horse that he died, *Mo. Ent.* 380. Striking horse, plaintiff thrown and broke two of his ribs, *Reg.* 96.

For inciting a dog to bite plaintiff, *Reg.* 97. Taking away a dog, *Hob.* 283. Shearing sheep, and carrying off the wool, *Reg.* 98. Rescue of bondman taken, *Ibid.* 10.

For throwing a writ of prohibition into the mud and treading upon it, and prosecuting a suit in the court christian, *Reg.* 95.

For removing stones put for bounds, and depasturing the grass, *Ra.* 9. *Reg.* 107. *Vet. Int.* 19. Removing and carrying away stones in a meadow, *Reg.* 107.

For placing pales in the water, *per quod* the ship with malt was sunk, *Ibid.* 95.

For cutting plaintiff's fishing tackle into pieces, *Reg.* 10.

For forcibly taking and carrying away a man's wife with his goods, and detaining, 2c. 1. *Br.* 338. 2. *Bro.* 282. 2. *Inst. Cl.* 455. 251. *Han.* 223. *Ra.* 662. *Reg.* 97. *Vet. Int.* 122. 3. *Br.* 472. *per quod consortium uxoris amisit*, and the use of his goods, *Tho.* 294. Beating the wife, and carrying her off with the goods of the husband, and yet detaining, 2. *Cro.* 518.

For taking and carrying off the daughter and heiress, or heiress apparent, 1. *Bro.* 336. *Bro. R.* 475. 1. *Br.* 264. 4. *E.* 4. 53. 30. *E.* 3. 6. 12. *H.* 4. 16. 2. *Inst.*

IN THE CIVIL DIVISION.

440. and marriage lost, *Bro. R.* 475. When married, *Ra.* 649. *Reg.* 98. *Gr. Litt.* 84. *8. Co.* 38. *Hob.* 94.

3. TRESPASS TO REAL AND PERSONAL PROPERTY—and PERSONS.

- | | | |
|---|---|-----|
| <ol style="list-style-type: none"> 1. Ways. 2. Lands. 3. Water-courses. 4. Fisheries. 5. For mesne Profits and Costs in Ejectment. | } | (3) |
|---|---|-----|

(See Ejectment.)

Vol.

IX.

Page

46. Declaration in B. R. for breaking open the door of plaintiff's house, and spoiling the lock, and then and there ejecting the plaintiff from his house, and seizing his goods, laying them in the highway, whereby plaintiff was put to great expence and trouble to watch his goods. (*See Plea of Liberum Tenementum, Index, post.* and p. 47.)
64. For entering plaintiff's ground and cowhouse, and taking away a cow, and detaining her till he had paid six pounds.
94. Declaration in B. R. for breaking plaintiffs close, and pulling down fences that inclosed the same.
94. Declaration in B. R. against an attorney of the court of C. B. for breaking plaintiff's orchard, entering his barn, seizing wheat and calves, and detaining the same till he obliged plaintiff to give an undertaking in writing to pay a sum of money.
95. Declaration in B. R. against defendant (and other persons unknown), for making a noise in the house of plaintiff, breaking down stairs, &c.
96. Declaration in B. R. for entering plaintiff's close, making rabbit holes, and cutting to pieces a net, placed for the taking of rabbits.
97. Declaration in B. R. for breaking into closes, mowing the grass, and carrying away the same; taking away a large quantity of water, assaulting plaintiff, throwing water at him, spoiling his clothes, &c.
98. Declaration by attachment of privilege at the suit of an attorney, for entering plaintiff's house, staying therein for a long time, making a great noise. (*See Plea, Licence in law, post.*)
100. Declaration in B. R. for entering a dwelling-house, &c. and making a riot therein, breaking down a fire-grate, tossing the fire out of the house into the street, and expelling plaintiff. (*See Plea, Liberum Tenementum, post.*)
106. Declaration in B. R. for entering a building, subverting the soil therein, and erecting a partition, and cutting

INDEX TO LEADING TITLES OR HEADS

Vol.
IX.
Page

- holes in the wall of the building, and laying timber therein. (See Plea, Title less than Freehold, *post*.)
111. Declaration in B. R. for breaking plaintiff's close, treading down his grass and corn, prostrating the hedges, and with horses and carts cutting up and subverting the soil, &c. &c.
113. Declaration in C. B. for entering plaintiff's close, and erecting a stall therein and tables, stools, &c. &c. continuing the same thereon, &c. &c.
113. Declaration in B. R. for entering close, and destroying gates and fences, and breaking to pieces locks, &c. (For Plea, *see* Title less than Freehold, and Licence in Fact and in Law, *post*.)
116. Declaration in B. R. for entering dwelling-house and closes, and taking away goods, expelling plaintiff, putting locks on the gates, digging up the soil, and depasturing plaintiff. (See Plea, *Liberum Tenementum*, Licence and Justification by Authority of Law, and under Legal Process, *post*.)
123. Declaration in B. R. for entering close, and depasturing cattle, subverting soil with carriages, mowing grass and carrying it away, felling timber and breaking down hedges. (See Plea, *Liberum Tenementum*, *post*.)
129. Declaration in B. R. for entering plaintiff's close, cutting down tree, and leaving it there.
130. For rooting up divers roots and shafts, and carrying same away.
130. Declaration in B. R. in trespass, *quare clausum fregit*, treading down grass, subverting soil, digging pits, removing materials, building walls, fences, and inclosing plaintiff's land, and putting plaintiff out of possession. Three Counts.
132. Declaration in B. R. against defendants, for pulling down the shed of plaintiff and building a house in the place, whereby plaintiff is hindered from enjoying his close, &c. (See Plea, Title less than Freehold, *post*.)
138. For breaking and entering divers closes of plaintiff in the occupation of different people, and with feet in walking, and with cattle depasturing, spoiling the grass, and with wheels of carriages subverting the soil. (See Plea, Right of Way, *post*.)
145. Declaration in B. R. for breaking close, taking plaintiff's mare out of the same, and converting it to his own use.
146. For entering closes, digging in soil, erecting scaffolding, nailing certain timbers belonging to the said scaffolding to their heads and windows, thereby spoiling said closes, damaging paint, and breaking windows; building part of an erection on plaintiff's wall, near

IN THE CIVIL DIVISION.

VOL.
IX.
Page

- to his houses and windows, whereby twenty windows were darkened; plaintiff obliged to lay out money, and one A. B. on occasion of premises refused to become tenant to plaintiff, and plaintiff unable to procure another tenant. Various other Counts.
148. Declaration in C. B. for cutting down and *carrying away* trees, destroying hedges; land damaged by cattle escaping out of an adjoining close. (*See Plea, Liberum Tenementum, post.*)
154. Declaration *by original*, for digging mines, raising ore in plaintiff's close, and converting same to defendant's use. (*See Plea, Liberum Tenementum.*)
157. Declaration in B. R. for hunting and fowling on plaintiff's estate after notice. 2d Count, as an inferior tradesman. 3d Count, more general.
158. Declaration in B. R. for breaking doors, putting furniture into disorder, disturbing lodgers, whereby they quitted.
159. Declaration in B. R. on 8. H. 6. c. 4. f. 6. for putting out and disseising plaintiff of lands, and holding plaintiff out when disseised.
160. Declaration by bill *in the exchequer* for entering plaintiff's close, by himself and servants treading down grass and corn, and by cattle eating and depasturing, and carriages subverting soil, breaking down gates, breaking to pieces locks, destroying hedges, overturning and scattering hay. (*See Plea, Right of Way, post.*)
169. RECORD in B. R. in trespass, for entering close, spoiling grass, pulling down posts and rails. Plea, not guilty. *Venire*. Continuances by *non misit breve*. *Postea*. Nonsuit. Suggestion under highway act. Award of treble costs to defendant under highway act. Form of the affidavit to recover treble costs by defendant under the highway act, where plaintiff was nonsuited.

LANDS, HOUSES, &C.---WATER-COURSES.

For breaking close, and assault, *Wi. Ent.* 987. *Bro. Vad.* 436. 3. *Br.* 473. Tretpass one day, assault on another, *Ibid.* 379.

For breaking house, assaulting and menacing plaintiff, *Tho.* 292. For an assault, and throwing *bibham et pulvinum* upon the land, and spoiling it, *Mo. Int.* 381.

For assaulting plaintiff, and shutting up the house and shop, by an erection in the street, *Chif.* 719.

NUISANCES.

For laying filth so near plaintiff's house that plaintiff could not go out or come in, 1. *Bro.* 337. Near the walls of plaintiff's house, *Reg.* 108. 1. *Br.* 166. So near plaintiff's mansion and other tenements in London, that plaintiff could not remain

INDEX TO LEADING TITLES OR HEADS

- remain for fear of infection, and his tenants left their houses, *Ra.* 442. 9. *Co.* 59. *Tit. Int.* 222.
- For erecting a house so near plaintiff's house, that by rain falling the timbers became rotten, 1. *Br.* 165. For obstructing sewer, *per quod* the water overflowed plaintiff's lands adjoining, *Reg. Jud.* 19. *Dig.* 205.
- For obstructing way and passage by inclosing with hedges, which plaintiff claimed by prescription, 1. *Bro.* 353.
- For placing and fixing pales, and posts, and planks in a certain rivulet, *per quod* the water-course was prevented; likewise filth and dirt thrown into the river, *Chf.* 718. 725. For filling the water with earth and filth, and fixing posts therein, *per quod* the water overflowed the corn in the barn, 1. *Br.* 166. Obstructing water-courses, *per quod* water overflowed plaintiff's meadow adjoining, *Ibid.* 166. Keeping streams so long shut that water overflowed adjacent land, in which plaintiff had common of pasture, *Ibid.* 167.
- For breaking close and house, digging soil, and raising walls and ditches, with a cart, 2. *Tho.* 351. Close and barn, 2. *Lut.* 1309. Stall, and taking away holding, 2. 1351. *Han.* 217. House, and disturbing plaintiff in the quiet possession, *Bro.* 201. *Chf.* 714. *Re. Dec.* 414. and prostrating chimnies with iron instruments, *Bro.* 368. and prostrating walls, *regularum*, windows and doors, spoiling goods, and carrying off, *Bro.* 381. *Han.* 218. House, and defendant's goods being kept there so long remaining on the premises, that plaintiff could not enter his house for a long time. *Mo. Int.* 382. House, (doors being shut), 2. *Lut.* 1320. House, and goods taken, and assaulting plaintiff, *Mo. Int.* 381. Brewery, drinking and destroying ale in great quantities, *Chf.* 713.
- For taking away other cattle which were within plaintiff's manor and liberty, *Chf.* 713. *Reg. Jud.* 222.
- For taking twenty messuages, ten cottages, four hundred acres of land, four hundred and forty and four hundred pasture, breaking close, and amoving plaintiff from the possession, and receiving all the profits of the manor and tenements, and hindering plaintiff from receiving them, *Bro. R.* 493.
- Breaking house, taking and detaining goods, and continuing plaintiff kept out of possession, *per quod* he lost use of his house, and goods, &c. for a long time, 2. *Lut.* 1452. *Chf.* 714. 717. 719. 721.
- House broken, and goods carried off, *Ra.* 614. *Wi. Ent.* 982. 2. *Lut.* 1369. 1421. Close and house broken, *Mo. Int.* 179. *Bro. R.* 475. 2. *Lut.* 1311. Chests broken, and goods carried off, *Reg.* 108. 110. Timber, and other goods and chattels, *Reg.* 102. Chest broken, and money, *Ra.* 64. Goods, 2. *Bro.* 271. 281. *Tho.* 351. 2. *Lut.* 1385. 2. *Inst. Cl.* 441. And withholding plaintiff from quiet possession, *Tho.* 398. 2. *Lut.* 1301. Doors and windows broken and cut up, *Reg.* 99. Hedges broken, *Ibid.* 101. *regulis*, with cattle or otherwise, and breaking the close and house, *Ibid.* 108. Breaking the pool (*lagne*) of a mill, *Ra.* 9. *Reg.* 96.
- For breaking *exclusa*, *per quod* water running to plaintiff's mill flowed into an adjoining ditch, *Ra.* 9. Breaking close, digging soil, and breaking down banks, *per quod* water overflowed plaintiff's meadow, *Ra.* 384. Breaking *exclusis* of mill pool at N. and the pound there, and at S. *Reg.* 96. Banks of sewers, *Ibid.* 106. Bridge, *Ibid.* 106. Breaking close and dove-house, and taking pigeons, and goods and chattels, *Ibid.* 106.
- Breaking posts and pales supporting a mine, and carrying away sea-coal put in the mine, *Reg.* 104.
- Breaking *exclusis* by a ditch, carrying away the timber, *per quod* plaintiff's land and meadow were inundated, *Reg.* 96.
- Breaking close, and throwing stones upon a hill thrown down thereon, *Asb.* 436. Break-

Breaking close, prostrating stall, digging soil, and erecting another stall, 3. *Br.* 415.

For breaking close and house, expelling, and for a long time holding over, destroying goods, breaking and taking away, 2. *Lut.* 1483. And assaulting plaintiff, 2. *Lut.* 61. And carrying off grain threined. *Clif.* 74. House, and carrying off bond, *Ibid.* 716. And breaking appendice, *Ibid.* 716. Expelling from possession of houses, *Ibid.* 730. Breaking a fulling mill, *Ibid.* 735.

Declaration for *mejor profits* of lands and tenements, *Clif.* 738. after ejectment, *Ibid.* 739.

Breaking pound and taking out horse, *Re. Dec.* 418. 2. *Inst. Cl.* 447. *Han.* 217.

Breaking close, and treading down grafs, corn, and depasturing grafs, *Ra.* 600. 633. 648. 1. *Co.* 77. *Pla.* 253. 4. 7. Treading down corn, and with cattle depasturing, *Mo. Int.* 378. 84. 2. *Bro.* 286. By husband and wife, whilst sole, 1. *Bro.* 336. *Clif.* 720.

Depasturing grafs, *Tho.* 305. *Wi. Ent.* 980. *Rob.* 472. 464. 477. 3. *Lea.* 87.

With a *continuando*, *Tho.* 293. 361. *Rob.* 59. *Han.* 213. 215. *Ra.* 621. 647.

Pla. 39. 510. *Vet. Int.* 209. *Asb.* 4. 8. Carrying away a wether sheep. *Han.* 215.

Eating up corn, *Rob.* 464. Breaking close, and with feet treading down grafs,

with a *continuando*, 1. *Bro.* 257. Eating up grafs, without *continuando*, *Wi. Ent.*

985. Eating up grafs, and treading down other grafs, with *continuando*, *Ibid.*

986. *Bro. R.* 489. *Tho.* 410. By husband and wife, *Ra.* 641. when sole, 21.

H. t. 30. Breaking close and house, and eating up grafs, *Ra.* 657. *Pla.* 164.

Corn and grafs, *Tho.* 351. *Bro. R.* 475. with *continuando*, *Mo. Int.* 379. with

out, 1. *Bro.* 335. By attorney, with privilege, *Ra.* 610. *Co. Ent.* 644. with

continuando, *Ra.* 657. 659. Eating up corn, *Reg.* 94. Wheat, *Ibid.* 94. Corn

in the blade, *Ibid.* 102. Corn and germs of vines, *Ibid.* 95. Corn, grafs, and

germs of cedar wood, *Ibid.* 95. Cutting trees and depasturing, with *contin-*

ando, *Ra.* 620. Corn and grafs, and treading down other grafs, with *contin-*

ando, 4. *Br.* 164. Eating up corn, and treading down other corn on three

several days, *Wi. Ent.* 976. Depasturing and treading down grafs, *Ibid.* 987.

Tho. 292. 344. *Bro. R.* 501. Hay, set out for tithes, thrown upon plaintiff's

grafs, *Wi. Ent.* 987. *Her.* 725. Trees and grafs pulled up by the roots, 1. *Br.*

181. Corn and grafs growing, and apples and pears, eating up with cattle,

Reg. 101. Carrying corn cut, *Ra.* 632. *Arundine* cut and carried off, *Reg.* 95.

Kil. 2. 2. *Arundine falcatus*, and beating servant, 9. *H.* 5. 9. Eating hay,

Reg. 98. Hay in *tassus*, *Mo. Int.* 383. 1. *Bro.* 222. Trees and hay cut and car-

ried away, 3. *H.* 4. 13. Corn cut, grafs cut, and hay thence coming, and corn

carried off, *Reg.* 102. 1. *Br.* 176. Throwing down hay laid up in a meadow

and with cattle eating up, *Reg.* 99. Breaking close, eating grafs, and assault-

ing plaintiff, *Wi. Ent.* 987. Treading down corn, and eating up corn and grafs,

Tho. 292. With *continuando*, *Ibid.* 417. 2. *Lut.* 1347. With feet in walking

treading down grafs, and with cattle eating up on one day, and treading

down and eating up on another. *Tho.* 372. Treading down, eating up

corn, and grafs, and breaking open gate and leaving it open, 2. *Bro.* 244.

Treading down, eating up corn and grafs, with *continuando*, *Tho.* 356. 320.

Carrying off grain, with *continuando*, as to depasturing, *Ibid.* 395. Eating

up corn and grafs, treading down other corn, and eating up other corn in *garbu*,

Wi. Ent. *Ibid.* 98. Carrying off corn cut, *Mo. Int.* 383. Hay found and car-

ried off, 1. *Bro.* 222. Carrots, parsnips, *sataw*, trod down, destroyed, and

pulled up, *Clif.* 709. With cattle eating up oats, *Ibid.* 711. Barley, beans,

oats, *lentibus*, and *rapis*, &c., *Ibid.* 721. 728. 740. Cutting corn, grafs, trees

and carrying off, and eating up other corn and grafs, *Reg.* 94. Eating up hay

in *tassus*, and corn in *garbis*, *Ibid.* 94. 96. Treading down grafs, eating up,

treading down, and destroying other grafs; cutting, taking, and carrying off

other grafs, and taking and carrying off hay, 2. *Lut.* 1313. 1337. Wheat and

barley, *Bro. Vad.* 419. Treading down grafs, depasturing other grafs, throw-

INDEX TO LEADING TITLES OR HEADS

ing down hedges and ditches, and subverting and digging soil, *Ibid.* 1347.
2. Inst. Cl. 436.
Treading down grafs with cattle, *2. Lut.* 1526. And eating up, *3. Lev.* 87. *Clif.* 723. Moving and carrying away hay, *Lev. Ent.* 178. And spoiling and tearing goods and chattels, *2. Inst. Cl.* 437. Converting grafs cut into hay, and carrying it away, with wheat also, *Han.* 220. And keeping plaintiff out of possession of his houses for six months, with *continuando*.
For breaking a bridge, cutting down trees, and throwing the timber of the bridge into the Thames, and digging soil, *per quod* the water inundated the meadow, *Reg.* 106.
By an executor, for entering into lands demised to testator, and by him bequeathed to plaintiff, *Reg.* 97. 102. *F. N. Br.* 104.
For taking corn and grafs growing, and the pears and apples, *Reg.* 101.

BREAKING CLOSE, &c.

For breaking the close and house, pulling down and overturning walls, taking away wood, stones, and mortar, breaking floors and mortar, also tearing away chimney, and slates and stones, hinges of doors, benches, timber posts fixed, &c. *2. Lut.* 1399. 1414. 1429.
Breaking close, assaulting and taking away a prisoner of war, *1. Bro.* 336. *Reg.* 95.
For breaking the close, *Ra.* 619. 622. *1. Br.* 164. *Ver. Int.* 235. Meadow, *8. H.* 6. 18. And possession detained, *Bro.* 132. And hedges broken, *Ra.* 666. House, *Wi. Ent.* 982. *Co. Ent.* 653. and the walls thereof, *21. H.* 7. 21. and timber taken, *Reg.* 94. House thrown down and timber taken, *H. 9. E.* 3. 4. And timber burnt, *Reg.* 91. Cattle and house broken, *Ibid.* 105. Close and house, *Co. Ent.* 557. *Ra.* 606. 619. *Co. Ent.* 272. House, and walls thereof broken, and plaintiff disturbed in the quiet possession, *Tho.* 406. *2. Lut.* 1301. *Ch. Aff.* 436. *Han.* 215.

DIGGING AND SUBVERTING SOIL.

For breaking close, digging soil, making ditches, and erecting hedges, *Tho.* 291.
Digging ditch, *Ibid.* 291. *2. Inst. Cl.* 439. *Ra.* 646. and other trespasses, *Ibid.* 607. *Reg.* 109. and carrying away lead, *2. Lut.* 1317. Carrying away earth, *Reg.* 94. Sea coal, *Ibid.* 94. *Ra.* 670. Digging earth and carrying away stones, *Co. Ent.* 656. Digging quarry, and carrying off the rock, *Reg.* 105. A mine, and carrying away coals, *Ibid.* 101. Lead ore, *1. Bro.* 335. *1. Br.* 168. Throwing down hedges and ditches, and subverting and digging soil, *2. Lut.* 1347.
Subverting soil with carts, *Ibid.* 1390. *Bro. Vad.* 440. *Co. Ent.* 272. 652. 654. With plough, *Ibid.* 288. With wheels of cart, *2. Lut.* 1526. *Han.* 223. *Ch. Aff.* 729. Making canals through the close, *Ibid.* 736. Eating up grafs, cutting trees, digging soil and carrying stones, *2. Bro.* 335. Digging soil with spades, and breaking and carrying away a gate, *Han.* 221. Measuring soil with instruments, *Exig.* posts in the soil, digging and raising ditches across, *Co. Ent.* 272. Digging soil, fixing (*viminibus*) near the river, carrying off the earth, *per quod* water overflowed the meadow, *Thes.* 91. Carrying away a new post fixed in the earth, *1. Br.* 176. Subverting and treading down meadow and pasture with pigs, *Reg.* 108. Throwing down a wall, *Tho.* 352. Digging soil and taking away and carrying away land thrown thereon, *3. Lev.* 156.
For breaking close, assaulting plaintiff, treading down, and eating up grafs, breaking, throwing down gates and hedges, and making a hole through and throwing down a bank, digging soil, and earth carried away, with *continuando*, *Clif.* 703. Treading down grafs, digging plaintiff's yard, erecting a stone wall, digging soil,

soil, and carrying away earth; *Ibid.* 708. Bating up grass, cutting trees, carrying away stones, with *continuando*, 2. *Inst. Cl.* 442.

HEDGES, DITCHING, WALLS, SEWERS.

For breaking the close, treading down grass, prostrating hedges, and ditches, 2. *Lut.* 1347. *Lev. Ent.* 2 9 2. *Inst. Cl.* 433. And taking *busca* thereon, 1. *Br.* 180. Breaking a gate, 2. *Lut.* 1526. Treading down grass, and eating up, and spoiling gates, walls, and hedges, breaking, cutting, rooting up, and prostrating, 3. *Lev.* 87. Breaking hedges, and *hails* and *busca* thereof carrying away, *Reg.* 105.

Breaking a house, throwing down stone wall, and carrying away stones, *Clif.* 707. Erecting a stall in a market place, *Lev. Ent.* 194. Breaking close, treading down corn and hay, and prostrating hedges, 2. *Bro.* 702. *Clif.* 723. And *janette* torn up and carried away, *Aff.* 451. Prostrating, spoiling, and carrying away hedges, 2. *Lut.* 1487.

For breaking a close, house, and hedges, pulling up stumps of trees by the roots, carrying away *busca* from the hedges, *Reg.* 101. Breaking down and prostrating hedges and ditches, *Co. Ent.* 647. *Reg.* 99. 1. *Br.* 165. Gates and hedges, *Co. Ent.* 651. By night, *Reg.* 92. Walls and ditches, 12. *Aff.* 28.

Throwing down sea banks, sewers, &c. to be kept cleansed and repaired by defendant, *ratione tenuræ*, *per quod* the sea overflowed plaintiff's lands sown with corn, *Reg.* 100.

Ditches *per quod* water was used to run near the land and meadow of plaintiff filling with earth, dirt, and stones, *per quod* water overflowed plaintiff's land, *Ibid.* 101.

Obstrueting sewers, *per quod* plaintiff's lands were overflowed, *Reg. Jud.* 19.

Breaking down banks of sewers, *per quod*, &c. *Reg.* 106. Breaking down plaintiff's wall erected against the sea side, *Ibid.* 92. 108.

For breaking close, eating up grass, and throwing down wall, *Re.* 618. Making a hole through the stone wall of a house, *Clif.* 717. Removing and carrying a grave stone, *Clif.* 709. Breaking down great part of a stone wall, and digging soil, and placing and fixing pales, posts, and planks in an ancient stream, *Ibid.* 718. Placing pales, posts, and planks in an ancient stream, and erecting *appendice* near the wall, *per quod* the wall was much weakened, *Ibid.* 718. Erecting a fence of posts and joists in the street, *per quod* shop was darkened and shut up, *Ibid.* 719. Carrying away timber walls, posts, joists, and planks, *Ibid.* 724. Throwing down pales, and cutting and eating up grass, *Ra.* 663. *Vet. Int.* 187. Prostrating gate, 3. *Br.* 426. Carrying away the wood of gates, &c. *Clif.* 725. Ditches, prostrating corn, *salcat.* *Ibid.* 727.

For breaking house and close, and taking away a cart, and spoiling the wall of the house, and breaking and destroying a furnace, *Re. Dec.* 413. Treading and eating up grass, subverting soil with carts, prostrating hedges, and spoiling trees with carts, and taking and carrying off timber, *Han.* 224.

For cutting and carrying away oaks, ashes, and elms; trimming elms, and carrying away the branches, &c. 2. *Lut.* 1487. Taking and carrying away ten cart loads of wood in bundles, forty ash and willow poles, *Clif.* 722. Trees cut, *Ibid.* 722. Cutting an elm growing near the mansion, *Ibid.* 717.

For breaking close, treading down grass, and cutting oak, and ash, and underwood, and carrying away the same, *Bro. Met.* 376. Breaking, biting, treading down, and bruising young trees, sprouts, and buds, *Hanf.* 214. Digging soil, and taking earth thrown up, and cutting, digging up, and rooting up trees, 2. *Inst. Cl.* 439. Cutting down, and carrying away timber Trees, *Han.* 217. 223.

For hindering a pool from running, *Reg.* 109.

INDEX TO LEADING TITLES OR HEADS

* For making trenches across a way which plaintiff hath to common of pasture, *Reg.* 616.

* For breaking *claus* and *pales*, erected by plaintiff in a fold which he hath with defendant and others, and hindering plaintiff from putting in *claus* and *pales* in the fold, and receiving the advantage thereof, *Reg.* 103.

FISHERY.

By parson of a church, who had a pond, for fixing *claus* and *pales*, in the putting in nets and taking the fish, *Reg.* 103. For throwing earth in *fosset* and *lino* and *equade* putting therein, *per quod* the fish perished, *Reg.* 105.

* For breaking a pool, *per quod* the water flowed in such quantity as to inundate plaintiff's fishery, and fish escaped, *Reg.* 95.

* For sale to several fishery, 2 *Inst.* Cl. 443 *Han.* 222. *Keil.* 53 *Dig.* 107. 2. *Inst.* 208. *Ash.* 440. And assault, *Dy.* 267. Breaking close, fishing in the several fishery, and digging soil, *Ash.* 442. Fishing in fish ponds and breaking mill pool, 1. *Bro.* 337. Fish pool, *Keil.* 53. Fish ponds, 2. *Inst.* 200.

* For fishing in free fishery, digging soil, and carrying off earth and fish, 1. *Bro.* 337.

* Carps, tench, perch, breams, and pickerel, taken and carried off, *Clif.* 703. *Han.* 222. Breaking pool, and drawing out *pales* and *pikes* fixed in the pool, digging soil, and carrying off the earth, 1. *Bro.* 337. Breaking close, digging ditch, and prostrating fish yard, *Clif.* 734. Entering plaintiff's pond with horses, stirring up the mud, so that thereby plaintiff's fish were suffocated, *Han.* 217. Breaking plaintiff's weirs laid to catch fish, *Ibid.* 223.

* For cutting trees, fishing in several fishery, digging soil, and carrying off grass cut, and hay, trees *fish*, and earth, *Reg.* 105.

* Fishing in several fishery *Reg.* 94 *F N Br.* 88 *Dig.* 170.

* For breaking pound, cutting trees, and fishing in several fishery, and fish and trees, and carrying off deer out of the park, *Ro.* 96. Close and houses breaking, and fishing in several fishery, and carrying off fish and goods, *Ibid.* 104. 110. Close and hedges, taking fish in several fishery, and treading down grass, *Ra.* 666. Fishing in free fishery, *Reg.* 95 *F N Br.* 88. And breaking mill post, 1. *Bro.* 165. Cutting trees, fishing in fish ponds, and taking and carrying off fish, and trees, and goods, and chattels, *Reg.* 93 95. *F N Br.* 88. By parson of a church, for fixing *claus* and *pales* in plaintiff's pool, putting nets, and taking fish, *Reg.* 103. By an abbot, who had a fish-pond beyond the harbour, and obstructing the course between the pool and the sea with nets, &c. *Reg.* 109.

PARK, CHASE, AND WARRENS.

* Breaking park, chasing and carrying off deer, 1. *Bro.* 338. *Ra.* 332. *Reg.* 93. *Fin.* 54 7 *Co.* 17 18 *E. 4.* 14 13 *H.* 7. 2. *Ash.* 134. By original, *Ibid.* 137. For entering *claus* and taking deer, 7 *H.* 6. 36. By the king, driving in the chase and taking the deer, *Ra.* 650. Breaking close, and taking and carrying off rabbits, *Clif.* 712 *Reg.* 93 102. *Dig.* 197. Entering a warren and carrying off conies, *Tho.* 293 2. *Mo.* *Int.* 308. Breaking close, chasing and taking hares and rabbits in the free warren, *Bro.* *R.* 483. Hunting and carrying off rabbits, *Tho.* 291. Treading grass and taking rabbits, *Ibid.* 387. Breaking *vivaris*, chasing and taking rabbits, *Ro.* *Ent.* 459. Killing a conie, 2. *Inst.* Cl. 451. With a *continuando*, *Han.* 211. 216. Killing a tawn, *Ibid.* 218. Breaking warren, shooting without a licence, and taking twenty partridge, *Ra.* 221. 223. Breaking park, entering warren, and chasing, and taking, and carrying off goods, deer, hares, &c. *Reg.* 109. 110. Cutting trees, *Dg.* 192 *Ash.*

- Aph.* 43. Taking fawns, *Dig.* 195. 43. *E.* 3. 24. Breaking close and taking a dead stag, 12. *H.* 8. 9. Entering warren, 3. *H.* 8. 12. By husband and wife for chasing in wife's warren, and taking hares and rabbits, *Ra.* 600. 43. *E.* 3. 13. Entering warren and wood, and taking the young of *epiorum* there breeding, and carrying them off with other goods and chattels, &c. *Reg.* 96. Taking hares, *Ibid.* 109. 1. *Br.* 191. *Reg.* 110. *L.* 55. For putting cats into a warren, *Ra.* 13.

TAKING BIRDS.

For breaking close and house, and taking pigeons with nets and other devices, *Reg.* 96. 10. *Dig.* 205. 1. *Br.* 166. 1. *Bro.* 337. Taking pheasants and partridges, *Bro.* *R.* 483. Game-cocks killing, *Clif.* 705. 715. Entering warren, destroying partridges, 2. *Inf.* *Cl.* 450. *Han.* 221. Killing a reclaimed hawk, *Tho.* 292. Taking pigeons, with *patella* and other devices, *Dig.* 196. 205. Breaking dove-house and killing pigeons, *Reg.* 104. *Dig.* 205. 47. *E.* 3. 22. Close and dove-house, and taking away pigeons and goods, *Reg.* 106. Breaking close and throwing *mufflego* into the dove-house, *Ibid.* 106. Throwing a cat into the dove house, who killed some of the birds and frightened the rest, *Ibid.* 106. Trees cut, swans, cocks, and hens carried off, *Ibid.* 110. Close broke, and pheasants, 1. *Br.* 67. Entering wood and carrying off the young of *epiorum* there breeding, *Reg.* 93. 96. 110. 7. *Co.* 57. *Dig.* 196. Breaking house, and taking *falcunculo* and *epries*, *Ibid.* 196. Close, and taking the young *epiorum*, *Ibid.* 197.

TREADING DOWN GRASS, &c.

Breaking close, and in walking treading down grafs, 1. *Bro.* 353. *Tho.* 499. *Bro.* *R.* 475. 2. *Lut.* 1506. *Re.* *Dec.* 419. 2. *Inf.* *Cl.* 447. *Ro.* *Ent.* 457. *Ra.* 646. 661. With a *continando*, 2. *Bro.* 254. Other grafs, *Wi.* *Ent.* 901. 2. *Inf.* *Cl.* 186. 330. Treading down corn, 2. *Co.* 18. Treading down and destroying corn and grafs, but does not lay with feet in walking or with cattle, *Reg.* 94. 107.

DESTROYING TREES.

By abbot in right of his church, for cutting trees and underwood, 1. *Bro.* 347. For cutting and carrying away trees, 1. *Bro.* 331. 2. *Bro.* 278. 2. *Inf.* *Cl.* 435. *Ra.* 18. 620. 622. Trees and underwood, *Ra.* 607. *Reg.* 109. *Aph.* 434. And carrying away other goods and chattels, *Ra.* 602. Cutting trees and carrying away, 44. *E.* 3. 43. 3. *Br.* 423. For breaking close, and cutting trees and underwood, *Tho.* 291. Eating up grafs and cutting trees and underwood, *Vet.* *Int.* 218. Treading grafs, and cutting and carrying away trees and underwood, *Bro.* *Met.* 376. *Clif.* 721. And corn down, *Reg.* 97. Cutting ash trees on one day and oaks on another, *Aph.* 437. Carrying away ash, *Co.* *Ent.* 76. Eating up grafs, raising hedges, and carrying away wood and underwood, 1. *Bro.* 354. Cutting and carrying away two oaks, and converting them to defendant's use, 2. *Lut.* 1396. Cutting wood and underwood, and carrying away goods and chattels, 2. *Bro.* 249. And burying soil, *Mo.* *Int.* 383. Trees, &c. cut, 2. *Bro.* 272. 276. Branches of trees cut, &c. *Bro.* *R.* 404. Corn cut, grafs mown, trees cut, and all carried away, *Reg.* 91. Trees cut, and with other goods thrown into the river, *Ibid.* 107. Trees and underwood cut and carried away, other trees rooted up and carried away, some burnt, and others barked, *Co.* *Ent.* 172. Pulled up by the roots and

INDEX TO LEADING TITLES OR HEADS

and carried away, *Reg.* 95. Grass rooting up, &c. 1. *Br.* 181. Eating up
grafs, cutting and carrying away furze and heath, 3. *Br.* 407. Burning furze
and briar these growing, *Aff.* 450. Eating up grafs, and with cattle destroying
fruit trees, and an assault, 3. *Br.* 379. Eating up the scions of apple trees
with cattle, 22. *Aff.* 42. Germs of coppice eating up, *Co. Ent.* 655. Cut-
ting, *Clif.* 737.
Eating up stocks of wood, *Ra.* 659. Corn, grafs, germs of coppice, *Reg.* 95.
Treading grafs, eating up other grafs, and cutting and carrying away thorns
and broom, 2. *Lut.* 1354.

Trespass to Fishery.

Vol.

IX.

Page

172. Declaration in B. R. for fishing in plaintiff's fishery,
entering closes, breaking down rails, treading down
grafs, &c. (*See* Plea, Right of Common of Fishery,
post.)
178. Declaration in B. R. for entering close, and fishing, and
catching fish. (*See* Plea, Common of Fishery, *post.*)

Trespass on Statutes.

157. Count in a declaration in B. R. on stat. 4. and 5. W.
and M. against defendant as an *inferior tradesman*,
for hunting and fowling on plaintiff's estate after
notice.
159. Declaration in B. R. on 8. H. 6. c. 4. f. 6. for putting
out and disseising plaintiff by force, and holding him
out.

OTHER DECLARATIONS UNDER PRECEDING HEADS.

PRECEDENTS IN BOOKS OF PRACTICE, REPORTERS, &c.

Declaration for killing plaintiff's mastiff dog. *Justification*,
that it was to prevent worrying his mistress's dog,
Declaration in trespass, for digging up coney borrows in the
soil,
Declaration in trespass *vi et armis* in B. R. for seizing and
converting plaintiff's goods, cattle, and chattels, in Gla-
morganshire, Wales,
Declaration in trespass against defendant *simul. cum.* &c. for
breaking, &c. plaintiff's ship, taking out and converting
the goods, and assaulting, threatening, and imprisoning

1. *Saund.* 84

2. *Willf.* 51

1. *Willf.* 193

the

IN THE CIVIL DIVISION

PRECEDENTS IN
BOOKS OF READING
REPORTS, &c.

the mariners; with special damage. Clayton v. Coatsworth,
Trespass, *quare domum fregit*, and for assaulting and menacing plaintiff's servants,
Trespass in B. R. for assaulting plaintiff, and also for beating his wife, *per quod consortium amisit* by husband alone,
Trespass, for *debauching plaintiff's daughter*, getting her with child, *per quod servitium amisit*, &c. Qu. if not case. (See Torts for.)
Trespass, *quare domum fugit*, and debauching, &c. and, &c. (See the Report where the distinction of Tort and Trespass in these cases is laid down by Justice Buller.)
Declaration in trespass *vi et armis*, for taking and carrying away turf and peat, and for digging up the soil. Plea, *non cul.*
Declaration in trespass in B. R. for breaking and entering plaintiff's house at divers days, &c. and debauching his daughter, *per quod servitium amisit*,
Declaration in trespass *vi et armis* in B. R. 1st Count, for mowing plaintiff's corn, and carrying it away, and converting it on divers days, &c. 2d Count, *quare clausum fregit*, naming the closes, and trod down the grass and corn, and with cattle eating up, &c. and with the wheels of carriages turned up, &c. other soil, &c. and carried away hay, and corn in the straw. 3d Count, for seizing and carrying away, and converting goods and chattels. 4th Count, similar trespass in another parish, at other times, in a common field. 5th Count, breaking; &c. other closes. 6th Count, seizing, &c. other goods and chattels.
Declaration in trespass, for taking away cattle,
Declaration in B. R. &c. against four defendants, for assault, battery, and false imprisonment, breaking and entering dwelling-house, and taking away plaintiff's property,
Declaration in B. R. for treading down and consuming plaintiff's grass by defendant with his cattle,
Declaration in B. R. for chasing and killing plaintiff's cattle,
For turning plaintiff and his family out of doors, and for taking and converting his goods. (In B. R.)
For destroying plaintiff's grass and corn, &c. (In B. R.)
Declaration in B. R. against an attorney, for entering plaintiff's stable, and taking away his horse,
Declaration against three, with another for breaking and entering close, treading and trampling down grass, and eating, and consuming, and spoiling the same by defendant's cattle, &c.
Declaration in B. R. for an assault and battery, against one defendant with an *alias dictus*, and the other by his proper name,
For breaking plaintiff's close at divers days, &c. and loading away his ~~land~~ *carriage*.

1. Show.

2. Salk. 622

Cro. Jac. 501

3. Will. 18

2. T. R. 156

Pl. Aff. 150

Plead. Aff. 501

Ibid. 397

Ibid. 485

Ibid. 487

Ibid. 488

Ibid. 488

Ibid. 489

Ibid. 490

Ibid. 490

Ibid. 491

Ibid. 494

Ibid. 497

For

INDEX TO LEADING TITLES OR HEADS

PRECEDENTS BOOKS OF PRACTICE REPORTERS, &c.

- For treading down plaintiff's grass, - - - - - Plead. Aff. 502
Trespass in B. R. for entering plaintiff's house, and taking
away his looking glass, - - - - - *Ibid.* 503
Declaration in B. R. for breaking plaintiff's stables and taking
away his dung, - - - - - *Ibid.* 510
Trespass, for breaking plaintiff's close called H. in the parish
of R. treading down the grass, depasturing the grass, and
for chasing, and taking, and impounding plaintiff's sheep, 3. Ld. Ray. 4. Ed. 113
Declaration in trespass, for breaking plaintiff's close, and
consuming the grass with cattle, cutting down trees, dig-
ging soil, making ditches, and subverting the soil with
carts, - - - - - 2. Lill. Ent. 425
Trespass, for assault and breaking plaintiff's thigh, whereby
he could not attend his business, - - - - - *Ibid.* 428
Declaration in trespass by original, for *crim. con.* with plain-
tiff's wife, - - - - - *Ibid.* 434
Declaration in trespass, for an assault, against a prisoner, in
pursuance of 4. and 5. W. and M. c. 24. Affidavit of the
delivery, - - - - - *Ibid.* 436
Declaration in C. B. in trespass, for an assault and false im-
prisonment. Not guilty. Novel assignment and issue, - - - - - *Ibid.* 437
Declaration in trespass, where the plaint was removed by re-
sa. lo. into B. R. and *fratbold pleaded in the court below*, - - - - - *Ibid.* 437
For taking away hay set out for tithe, - - - - - *Ibid.* 437
Trespass, by an infant by his *prochein ami*, for the battery of
his servant, - - - - - *Ibid.* 439
Declaration for detaining plaintiff's wife, who had departed
from plaintiff, and for refusing to deliver her to plaintiff,
who found her in defendant's house, - - - - - *Ibid.* 441
Trespass, for taking the goods and chattels, jewels, and dia-
monds of plaintiff, together with his wife, - - - - - *Ibid.* 441
Trespass, for arresting and detaining plaintiff's ship, about to
sail beyond the tents with goods and merchandizes, whereby
he lost the profits he should make as a partner, and in sel-
ling for the other merchants who were partners, - - - - - *Ibid.* 447
Trespass, for taking a negro slave, - - - - - 3. Ld. Ray. 4. Ed. 129
Declaration for impounding cattle, and continuing them im-
pounded till some person let them out, whereby they were
lost, - - - - - *Mor. Pr.* 637
Declaration for seizing cattle, - - - - - *Ibid.* 648
Trespass, for stopping the plaintiff's waggon, and seizing
and taking from the cattle drawing the same a pair of
iron givies. Defendant prescribes for toll through the
street of Gainborough, in consideration of repairing di-
vers bridges there, and to distrain for the same. The
plaintiff replies, *de injuria*, &c. and traverses the prescrip-
tion. Verdict for defendant. Prescription adjudged ill in
arrest of judgment, because it doth not say that he repaired
all the bridges, and that the plaintiff might be passing
through a street which he did not repair, - - - - - *W. & A. Rep.* 296. b.
Trespass,

Trespass, for taking, driving, and carrying away the plaintiff's hog.

2. Warr. Rep. 99

Trespass, *quare clausum fregit*, and trod down and consumed the grass and corn, and reaped cut down, and carried away the grass and corn. 2d Count, for mowing, reaping, and carrying away; &c. other grass and corn. 3d Count, similar;

Ibid. 68

Declaration with a *continuando*, *quare clausum fregit ceperunt*, and *asportaverunt*, &c. 1st Count, for breaking and entering the plaintiff's closes, spoiling the grass and corn, and with cattle, &c.; and for mowing, cutting, and carrying away the same, and with carts, &c. spoiling the plaintiff's soil. 2d Count, for mowing and cutting grass and corn of the plaintiff and carrying it away. 3d Count, for taking and carrying away other grass and corn of the plaintiff. Plea, not guilty.

Ibid. 127 to 129

Declaration in trespass, for breaking and entering plaintiff's house, and continuing there for six hours, making a great disturbance and affray therein, and wrenching and forcing open the closet door, drawers, chests, cupboard, and cabinets of plaintiff, and the goods, chattels, wares, and merchandizes of the plaintiff there found, tossing, tumbling, and spoiling, to the plaintiff's damage. Demurrer; and for causes, that plaintiff hath not specified the goods and chattels, &c. supposed to have been tossed, tumbled, damaged, and spoiled; and for that the charge of wrenching and forcing open the closet doors, drawers, chests, cupboard, and cabinet, is not alledged with sufficient certainty, to wit, for that it is alledged that plaintiff wrenched and forced open the said closet doors, drawers, &c.; and for that the number of the closet doors, drawers, &c. is not specified. Joinder in demurrer.

Ibid. 292

Declaration in trespass, for an *assault* and putting out the eye of plaintiff with a lighted iquib made of gunpowder, &c.

Ibid. 403

Declaration for an *assault*, against a prisoner in custody of the sheriff of Middlesex,

1. R. P. B. R. 390

Declaration in C. B. for entering and hunting in a chase or warren, and killing game.

1. R. P. C. B. 482

For breaking plaintiff's close, &c.

Ibid. 133

Trespass in C. B. for carrying away plaintiff's wife's goods and chattels, *per quod*, &c.

Ibid. 486

For an *assault* and battery,

Ibid. 134

Trespass in C. B. for carnally knowing plaintiff's wife, *per quod*, &c.

Ibid. 488

Declaration in C. B. for shooting a greyhound,

Ibid. 413, 515

Declaration in trespass, for breaking the plaintiff's house, assault and lying with his wife,

2. R. P. C. B. 418

Bill against an attorney of C. B. in a plea of trespass and assault, for criminal conversation with plaintiff's wife. Plea, not guilty.

Ibid. 419

For

For breaking plaintiff's close, treading down grass, &c.	2. R. P. C. B. 421
For entering plaintiff's free chase and free warren, hunting and killing game. (In C. B.)	<i>Ibid.</i> 430
For cutting down trees of plaintiff, carrying away timber, &c.	<i>Ibid.</i> 431
For shooting a greyhound, &c. (In C. B.)	<i>Ibid.</i> 432
Against husband and wife, for taking away corn in the straw by the wife, and converting to husband's use,	<i>Ibid.</i> 437
For recovery of <i>mesne profits</i> in ejectment,	<i>Ibid.</i> 440
For cutting down a grove, which was an ornament and defence to a messuage. Plaintiff, an infant, by <i>prochein ami</i> ,	<i>Ibid.</i> 452
Declaration by an infant, in assault and battery,	<i>Ibid.</i> 454
Declaration in trespass, for killing a pig and a hog,	<i>Ibid.</i> 456
Declaration by an attorney of C. B. by writ of privilege on <i>Magna Charta</i> , c. 29: that no freeman shall be taken without judgment of his peers for <i>assaulting</i> plaintiff, and imprisoning him till he found bail to appear at the next assizes,	Lill. Ent. 74

TRESPASS—WILFUL AND MALICIOUS:

- Assaulting widow, imprisoning her, carrying her off to parts beyond the seas, threatening her life if she did not marry defendant, *Bro. R.* 484.
By the keeper of a gaol, for getting away an excommunicated person out of his custody, *Reg.* 104.
Against a bailiff, for not permitting the tenant of an abbot to be quit of toll after a *pluries* writ, *Reg.* 101.
For driving a nail in the foot of a horse, *per quod* he became lame, 46. *Ed.* 3. 19.

PLEAS in DENIAL and DISCHARGE. (4) *See post.* (26)
LIBERUM TENEMENTUM.

Joint-Tenancy.
Tenancy in Common. } (5)

Vol.

IX.

Page

47. Plea (to declaration for breaking open plaintiff's house, &c.); 1st, not guilty. 2d, as to the breaking open the door, spoiling the lock, ejecting the plaintiff, seizing his goods, &c. defendants say, that the house is the freehold of one of them; and as to the treading down the grass, they had a right so to do, and as to the assault. 2d, *Non assauti demittitur.* (See Declaration, p. 46.) 3d, *REPLICATION*, that the house and close belonged to the defendants; and as to the assaulting the plaintiff and his wife, says, *de injuria, &c.*; and as to the assault, *de injuria, &c.* *Rejoinder* and issue.

Plea

Vol.

IX.

Page

101. Plea to trespass, for entering house, tossing about furniture, expelling plaintiff, &c. that G. P. seised of the house by will devised to A. P. his wife *for life*, and died; and because plaintiff wrongfully intruded himself, defendants as servants of A. P. ejected plaintiff. *REPLICATION* admits A. P.'s seisin under the will, but says that A. P. demised the house to one J. B. who demised to the plaintiff, and that defendants *de injuria*, &c. Rejoinder, surrejoinder, and issue.
104. Plea (to trespass for entering dwelling-house and closes, taking away goods, expelling plaintiff, putting locks on the gates, digging up soil, depasturing cattle). 1st, General issue. 2d, *Liberum tenementum* of one of the defendants. 3d, Leave and licence. 4th, As the bailiff to execute a *fleri facias*. *Replication*, issue on *liberum tenementum*. To 3d, issue. 4th, New assignment.
105. Plea (to declaration for entering close, depasturing cattle, subverting soil, &c. p. 123.), that *locus* is parcel of the manor of N. and divers customary tenements within the manor called tenant right. S. W. seised of *locus*, being such tenant custom within the manor, that widows shall hold *durante casta viduitate*. S. W. died seised, widow became seised. Reversion descended to John, eldest son of S. W. who died seised without issue. Reversion descended to S. W. the son, who became seised of the reversion. The widow died, and S. W. the son became seised. Colour given. S. W. and the other defendant enter.
106. *REPLICATION* states the reversion *to be deviseable* by the custom of the manor, and that J. W. made his will during the life of the widow, and devised the reversion to plaintiff for two years, traversing the descent to defendant the second son.
107. Plea (to declaration for cutting trees, &c. p. 148.), 1st, General issue. 2d, That defendants as servants, and by command of the reversioner in *locus*, &c. who had power to cut timber, entered *locus in quo* with horses and carts for the purpose of cutting timber and carrying it away, and in so doing, &c. (stating that C. T. seised of *locus in quo*, demised to S. W. lessor of plaintiff for ninety-nine years, reserving all timber trees, and seised of reversion, after the term, conveying by lease and release to W. T. in trust for A. C. father of one of the defendants, *habendum* in trust. Reversion descended to W. T. son, and as servants of last-mentioned W. T. entered, &c.
108. Plea (to declaration for *digging mines*, &c. p. 154.), that *locus in quo* was the freehold of A. B. wherefore defendants, as tenants of A. B. dug the mines. *Replication*, *similiter* to the general issue; traverse of

INDEX TO LEADING TITLES OR HEADS

Vol. 11
11X.
Page

- second plea, and that the close is plaintiff's freehold, *Similiter* and *award of venire*.
181. Plea (to trespass, for placing timbers on plaintiff's wall, &c. breaking closes, diggings, &c.), 1st, Not guilty. 2d, To placing timbers, say, that the walls are the freehold of one A. B. and plaintiff, and they as servants, and by command of A. B. set up the timbers. 3d, An easement right to place, &c. (See *Easements, post.*) 4th, As to breaking closes, digging, &c. that the close is the freehold of A. B.
- 182.
- 183.
250. Plea (to trespass, for taking, cutting, carrying away, and converting trees, pulling down hedges, &c.), 1st, Not guilty. 2d, *Liberum tenementum* of copyhold premises, deducing title. 3d, Right of way by prescription; and because hedges, &c. obstructed, &c. pulled down, &c.
265. Plea (to declaration, for entering, spoiling grass, carrying away water, &c.), *liberum tenementum* giving colour.
- 266.
324. Plea, *liberum tenementum* of A. B. (to trespass for breaking and entering dwelling house), and as servant of A. B. entered.

Liberum Tenementum and Tenancy in Common. (See Title less than Freehold, *post.*)

PRECEDENTS in
BOOKS of PRACTICE,
REPORTERS, &c.

Plea (to declaration in trespass, *quare clausum fregit*), and trod down and consumed the grass and corn, and reaped, cut down, and carried away, &c. the corn and grass. 2d, Count, mowing, reaping, and carrying away, &c. other grass and corn. 3d, *Similar*), 1st, General issue. 2d, As to breaking the close, spoiling the grass, and eating up other grass, and with carts, &c. spoiling the soil of the closes, defendants say, that one P. K. before the time when, &c. was entitled to the said closes for remainder of a term of ninety-nine years, determinable on the death of the said P. K. who demise the same to defendant J. W. to hold the same for one year, and so from year to year, so long as it should please the said P. K. and the defendant J. W. and the estate and interest of the said P. K. should continue therein; by virtue of which demise the said J. W. entered and was possessed, the said P. K. being then living, and his interest still continuing therein; and being so possessed the said J. before the time when, &c. ploughed and sowed the said closes with corn; and the said P. K. after the said J. W. had so ploughed and sowed, and before he had reaped and carried away the corn, and before the end of the said ninety-nine years, and before the said time when, &c. died, and so the defendants justify the

entering

entering into the closes, and reaping and carrying away the corn, and excuse themselves for treading, &c. a little grain upon that occasion. Demurrer, with causes: 1st, That defendants have not set forth the commencement of the said term of ninety-nine years. 2^d, That defendants have not shewn that plaintiff at the time of the demise to the defendant J. W. or before was *possessed* of the said closes, but only that he was *entitled* thereunto. Joinder. 2. Will. Rep. 66. 69

Plea. 1st, Not guilty to the whole, *similiter*. 2^d, That the trespasses, &c. in the first, second, and third Counts are the same, and all relating to the close in the first Count, which is defendant's *freehold*, wherefore he and the other defendants as his servants justify, &c. except as to thirty-six acres thereof. 3^d Plea, same as to second, to fifth, and sixth Counts, omitting the 4th REPLICATION and *nolle prosequi*; as to the third, fifth, and sixth Counts; as to part of the trespasses therein contained; as to the residue of the trespasses, except those to which the *nolle prosequi* extends, and which are denied by the general issue, *similiter*. And to the 2^d plea, and the trespasses thereby attempted to be justified, except the hay and grass, parcel of the goods in the third Count, new assignment of a trespass in a different part of the close called the C. to wit, thirty-six acres thereof, part of the glebe land of the rectory of M. of which plaintiff was tenant in possession. 2^d Count of *new assignment* adopts the 3^d Count of declaration. As to residue of trespass in the 2^d plea plaintiff admits that the close called the C. contains one hundred and forty acres, and except thirty-six thereof is the freehold of defendant, but says that J. D. before the said time when, &c. was tenant for life of the said close, except, &c. and defendant was seised in fee of the reversion, and demised by lease of J. D. and confirmation of defendant for twenty-one years; plaintiff entered and was possessed during the term; states a custom in parish of M. of every way going tenant to enter and take his way going crop, and claiming the corn in the first Count as such; and that defendants *de injuria* took it. Replication to the 3^d plea, as to cutting and carrying away the corn in the fifth Count, and the goods, &c. in the sixth, except the hay and grass, parcel thereof, same as *replication* to 2^d plea, states a similar custom in the parish of M. *de injuria*, &c. *New assignment* as to seizing, &c. of the goods, &c. in the sixth Count, except the hay and grass, parcel thereof, says, that those goods, &c. were no part of the goods, &c. in the 3^d plea mentioned. REJOINDER, giving judgment by *nil dicit* on the first *new assignment*; protesting against the insufficiency of the first replication; traverses the custom set out in the first replication; concludes to the country *similiter*. Similar rejoinder to 2^d replication, traverse of the custom in the 2^d replication. General issue of not guilty

INDEX TO LEADING TITLES OR HEADS

PRECEDENTS IN
BOOKS OF PRACTICE,
REPORTERS, &c.

all to the last new assignment. Award of *venue* and *nisi*

Pl. Aff. 400

Plea, *non tñl.* to the force, &c.; and issue to the residue of
the trespass; that R.T. was seized of a close, and defendant
as his servant took the cattle there damage feasant. Re-
plication, *de injuriâ*, &c.

Ibid. 485

Plea, *non tñl.* by one, joint-tenancy by the other, *Ra. Ent.* 615.

Plea to breaking close and cutting trees of freehold; to the *menaces*, that defend-
ant perceived plaintiff desist from cutting the trees, otherwise he would sue him,
and traverses *menaces* against his life, *Ra.* 647.

Plea to breaking close and cutting down trees, that *locus, &c.* was defendant's freehold,
and plaintiff would enter claiming to hold *at will* of M. who had nothing in the
premises, and defendant said to him, that he would enter at his peril. Repli-
cation, and issue on the disseisin, and nothing to the *menaces*, *Ra.* 647. *Ver.*

Plea of *liberum tenementum*, new assignment, and *non cul.* thereto, *Ra. Ent.* 457.
Replication, *de injuriâ*, &c. traverse of freehold of defendant, but ought to
conclude to the country where there is no new assignment, 2. *Lut.* 1400.

Plea, that *locus, &c.* is defendant's freehold. Replication, plaintiff's freehold,
Ra. 647. *Co. Ent.* 675. *Ver. Int.* 43. *Ass.* 436. Like, by servant, *Ra.* 605, 649.
Upp. 127. Traverse, that it is freehold of defendant, 3. *Br.* 456. Replication,

de injuriâ, &c. *Ver. Int.* 53. Replication, special, 3. *Br.* 475. Replication,
that defendant's father enfeofed plaintiff's father, whose heir he is in estoppel,
Ind. H. 7. 42.

That *locus, &c.* is freehold of defendant and his wife, in right of his wife. Repli-
cation, that *locus, &c.* is plaintiff's freehold, and not of defendant and his wife,
Ra. 648.

Plea at M. there are many closes called *Ley of Ground*, but none without other ad-
ditions, and that *locus, &c.* was called Garlick's *Ley of Ground*, his freehold,
&c. 2. *Lut.* 1489.

Plea, not guilty to part; to the other part, that the close in the declaration first
mentioned is his freehold, by one defendant; and the other justifies as servant;
and as to trespass in the close called H. defendant prescribes to enter therein to
repair a mill dam; and to the trespass in the close called S. that it was parcel of
C. common, where plaintiff prescribes to dig and carry land to amend the dam as
often, &c. *Tbo.* 305

Plea, *non cul.* to part; and to residue, that *locus, &c.* is freehold of defendant and
others. Replication, plaintiff's freehold, and not of defendant and others, *Ra.*
648. *Non cul.* by one defendant; *non cul.* to all the trespasses except &c. by two
others, and barthereto that *locus* is freehold of one of them; and the other justifies
as servant. Replication as before, *Ibid.* 648.

That *locus, &c.* is a close containing five acres, and that J. seized of two acres
thereof demised them to R. for life, who enfeofed C. and land descended to de-
fendant, who entered for the forfeiture, and that residue of the lands are defend-
ant's freehold; new assignment, and *non cul.* thereto, *Ra.* 647.

That *locus, &c.* is two hundred and fifty acres of brash abutting, &c. parcel of the
manor which is defendant's freehold. Replication, that *locus, &c.* is two hun-
dred acres, parcel of said two hundred and fifty acres, whereof W. seized demised
to plaintiff for ye. 1., and traverses they are parcel of the manor, *Upp.* 137.

That R. seized of lands, demised to T. for life, and if F. should die without issue
then remainder to T. in fee; F. died without issue, T. enfeofed M. and lands de-
scended

ended to defendant. Replication that F. was attainted of treason by parliament; and thereupon H. 7. was seised of the reversion, from whom it descended to H. 8. T. died, and inquisition after his death lands descended to Queen Elizabeth who granted to R. who enfeoffed plaintiff. *Rejoinder*, that there is a saving in the act, by reason of which T. was seised *in fee*. Demurrer, *Ra. 633. Pl. 477*. That plaintiff was seised of lands, and attainted of treason by commissioners and parliament. King granted lands to defendant. Demurrer, *Ra. 643. Pl. 385*. That plaintiff seised, levied a fine to M. and G. his wife, who enfeoffed defendant. Replication, that fine was levied to the use of M. and G. on certain conditions not performed. *Rejoinder*, that plaintiff released all conditions and entries for conditions broken. Surrejoinder, that plaintiff cannot read, and agreed to make the release for money only, and *non est factum*, 2. Co. 6.

BY FEOFFMENT.

That R. being seised, enfeoffed defendant and another whom defendant survived, and is sole seised, and gives colour to plaintiff by deed of demise for life, *7bo. 341*.

That J. being seised, enfeoffed T. and A. his wife, to hold to them and the heirs of T. whom A. survived, and took to husband plaintiff, and reversion descended to their son T. who by indenture enrolled sold the reversion to W. Plaintiff committed waste in cutting the trees, and defendant, at the request of W. entered into the lands in the new assignment to see the waste, which is the trespass. Replication, confessing the feoffment and descent, and says that T. the son, granted and confirmed to plaintiff, then in possession, the reversion in fee. *Rejoinders*, maintaining the plea, and traverses the grant and confirmation to plaintiff, and issue, *Ro. Ent. 468*.

That R. and others, seised, enfeoffed J. to the use of E. for life, before the statute of uses J. married B. and enfeoffed P. to the use of E. and died, E. demised to defendant for life. Replication, that J. being seised to the use of E. enfeoffed P. in fee, who enfeoffed R. and others to the use of P. in fee, and died; R. and others re-entered, and P. demised to plaintiff for years, and traverse that R. and others enfeoffed J. to the use of P. *Ra. 629*.

That J. being seised, enfeoffed R. and others, and R. enfeoffed defendant of part. New assignment and not guilty, *Ra. 641*.

That J. seised, enfeoffed defendant. New assignment thereto, *Uthp. 186*.

DISSEISIN.

Plea of freehold. Replication, that plaintiff's father, seised of the tenements, demised to defendant for life, on condition of re-entry for rent unpaid, and if defendant should commit waste, the reversion should descend to plaintiff, who for voluntary waste committed, entered and was seised, until defendant disseised him and plaintiff re-entered. *Rejoinder*, maintaining freehold, and traverses disseisin, *Pl. Cas. 614*.

That defendant's father, being seised of the messuages, gave them to J. son and heir in tail, remainder thereof to defendant in tail. J. was seised until L. disseised him, who made continual claim during the life of L. who died, and the houses descended to R. who entered, and J. re-entered upon his possession, and died seised, and messuages descended to defendant in tail, and gives colour. Replication, that father of defendant was seised and enfeoffed L. who died seised, and messuages descended to R. the son, who demised to plaintiff, and traverse that L. disseised J. *1. Bro. 343*.

That *loun, &c.* is freehold of J. and others, and defendant as servant to the horse damage

Damage feasant. Replication, that defendant disseised plaintiff and enfeoffed J. and others thereof, and plaintiff re-entered. Rejoinder, that W. being seised, enfeoffed G. who enfeoffed J. and others, and traverses that defendant disseised plaintiff, *Ra. 629. Vet. Int. 161.* Replication to like bar, that plaintiff was seised until defendant disseised him, and plaintiff re-entered. Rejoinder, maintaining the freehold, and traverses the disseisin, *Ra. 647. Co. Ent. 289. Vet. Int. 160.* By servant to part of the trespass. *Abb. 450.*

Like plea, to cutting down trees. Replication, that plaintiff's father was seised of lands that descended to plaintiff, and defendant disseised him, who re-entered.

Rejoinder, maintaining freehold, traverses disseisin, *Ra. 648. Vet. Int. 100.*

Like plea. Replication, that T. being seised, enfeoffed plaintiff, who was seised until A. and B. defendants, disseised plaintiff to the use of A. and plaintiff re-entered. Like Rejoinder, *Ra. 641. Vet. Int. 235.*

That locus, &c. is freehold. Replication, that T. seised of the manor whereof, &c. demised to plaintiff for years, who was possessed until defendant expelled and disseised T. and plaintiff re-entered. Rejoinder, that defendant's father was seised, from whom it descended to defendant, who was seised until T. disseised him and demised to plaintiff, and defendant re-entered, and traverse that defendant disseised T. 3, *B1. 467.*

That J. seised of lands, enfeoffed defendant. Replication, that plaintiff was seised until defendant disseised him and enfeoffed J. who enfeoffed defendant. Rejoinder, maintaining the bar, and traverses the disseisin, *Ra. 641.*

Trespass against A. and B. now assignment in C. and D. A. says to trespass in D. *non cul.*; to trespass in C. pleads that M. seised, demised to him for years. B. says to trespass in C. *non cul.*; to trespass in D. that W. seised, enfeoffed him B. thereof. Replication to plea of A. that plaintiff was seised until A. disseised him and enfeoffed M. who demised it to defendant A. and plaintiff re-entered; and to plea of B. that plaintiff was seised until B. disseised him, and enfeoffed M. who re-enfeoffed defendant B. &c. Several rejoinders, maintaining the several bars, and traverse of the disseisins, *Co. Ent. 653.*

Plea to part of the trespass, that B. seised, enfeoffed defendant. Replication, that A. being seised, demised for years in reversion after the death of tenant for life, who assigned to defendant, and that B. enfeoffed defendant by disseisin. Rejoinder, maintaining the declaration, and traverses the disseisin, and another bar, that lands were customary lands, *Co. Ent. 660.*

That E. seised of lands by his last will gave them to E. and M. in fee, who took husbands, and they were seised in right of their wives, and give colour to plaintiff by virtue of a feoffment. Replication, that plaintiff recovered the lands against defendant and others in C. b. in ejectment. Rejoinder, maintaining the bar. Demurrer, *Bro. R. 494. Ventre facias,* and enquiry of damages awarded, *hollid. 495.*

See also 1048

DESCENT.

That defendant's father was seised of lands which descended to defendant, and gives colour. Replication, that plaintiff was seised before defendant's father had any turning in the lands, and defendant *de injuria*, &c.; and traverse that father died *intestate*, &c. 336.

That W. died seised of close and places in which, &c. in fee, that descended to T. who being seised, he entered, and gives colour; and defendant as his servant finding goods to be taken from them, W. Ent. 109.

Whereas plaintiff's father took them, that J. was seised of lands that descended to S. and his servant came to E. and D. as his servant, cut down underwood,

IN THE CIVIL DIVISION

- and gives colour. Replication, protesting, &c. pleas, that lands were plaintiff's freehold, and traverses that J. died seised, and issue, *Ro. Ent. 476*.
- That J. was seised of lands that descended to defendant's wife and three other sisters of J. one of them enfeoffed defendant of her part, and two demised to defendant, who gives colour to plaintiff. New assignment, and non cul. thereto, *Ro. Ent. 477*.
- That defendant's father was seised of lands in the new assignment that descended to defendant, and plaintiff after the father's death abated into the lands, and was seised by abatement, on whose possession defendant entered, and his close being his freehold, broke, &c. *Ro. Ent. 479*.
- That defendant's grandfather seised of lands devised to A. his wife in fee, which after the death of A. descended to defendant as son of the son and heir, and gives colour, *Brc. R. 497*.
- That A. is repugnant to say, that lands are copyhold and yet defendable, *2. Lut. 1327*.
- That defendant's father was seised of lands that descended to defendant. New assignment, and non cul. *Ra. 631. Vet. Int. 100*. That R. was seised of lands that descended to defendant's wife. Replication, that T. being seised, enfeoffed plaintiff, who was seised until trespass was committed, and traverses that R. died seised, *R. 632*. The like of lands in gavel kind, *Ibid. 632*.
- That W. seised of land in gavel kind which descended to defendant and one J. daughter begotten of several wives, J. died without issue, and by the custom of the tenure lands descended to defendant. Replication, that lands descended to two cousins of the whole blood, who enfeoffed plaintiff, and traverses the custom of descent to the brother of half blood, *Upp. 139*.
- That L. was seised of lands that descended to A. his daughter, who took plaintiff to husband, and had issue *filium abortivum*, and died, and lands descended to defendant. Replication, that plaintiff and A. had issue born alive; and that plaintiff is tenant by the curtesy. Rejoinder, that they had not issue born alive, *Ra. 62*.
- That W. was seised of lands that descended to defendant. Replication, that J. seised, enfeoffed plaintiff, and that plaintiff agreed with W. to sell to him the lands, and in the mean while that he would receive rent to the use of plaintiff; and before assurance W. died, and plaintiff re entered, and traverse that W. died seised, *3 Br. 447*.
- That J. seised of lands, married A. and had issue defendant; J. died, and lands descended to defendant. Replication, that a divorce was had, *causa conjugum tacta*, *18. E. 4. 29*.

JOINT-TENANTS AND TENANTS IN COMMON.

- That one defendant and J. were seised of a several close, and because defendant found cattle there damage feasant, took and impounded them. Replication, *de injuria*, &c. and traverses that defendant and J. were seised; and issue, *Tho. 296*.
- That H. being seised of a close, demised to plaintiff for years, who demised a moiety thereof to J. who made defendant executor and died; defendant entered, and claimed to hold in common with plaintiff, *per quod* he made the trespass, *Tho. 338*.

LIBERUM TENEMENTUM BY CLERGY.

- That locus, &c. is five acres of land, parcel of glebe of the rectory of the church of L. whereof defendant is parson, *Ra. 624*.
- That defendant is vicar, and that locus, &c. is defendant's freehold in right of his vicarage, where he took the goods damage feasant, *Ra. 629. Vet. Int. 53*.
- That land is parcel of the manor whereof vicar is seised in right of the vicarage, and defendant as servant, &c. Replication, that vicar demised to plaintiff for years. Rejoinder, that the vicar is seised, and traverses the demise, *Upp. 195*.

INDEX TO LEADING TITLES OR HEADS

LIBERUM TENEMENTUM.

- That *locus, &c.* is defendant's *freehold*. Replication, by disseisin, and issue, *Ra.* 647. *Vet. Int.* 169.
- Plea by defendant to residue, that he is lord of the manor of which the close *quo, &c.* is parcel and he with the others, as his servants, put their cattle into the close to feed, and that divers other sheep of persons unknown, *not having right of pasture*, were feeding there, which they drove out; that plaintiff's sheep were mingled with the other, and defendants separated them as soon as they conveniently could, and left them in the close; to the entry and with feet in walking, and treading down grass, demurrer, for that it amounts to the general issue; and to chasing and impounding plaintiff says she demanded delivery of the sheep, but defendant refused and kept them twenty-four hours, &c. Joinder in demurrer to part; and to residue rejoinder, maintaining plea, and traversing the request of the delivery of the sheep and refusal. Demurrer, that traverse is bad, and joinder, *Lev. Ent.* 188.
- Plea (to chasing and wounding a gelding), that *locus, &c.* is *freehold* of defendant, who chased the gelding out of the close with a little dog, that he might not do any further damage, and the gelding voluntarily leaped on the gate and wounded himself, *Tbo.* 343.
- That G. being seised of lands held of defendant, died without heir, and defendant entered into the lands by *escheat*. Replication, that G. had issue, who enfeoffed S. who enfeoffed plaintiff. Rejoinder, that he was a bastard; and writ awarded to the bishop, *Ra.* 638. *Vet. Int.* 34.

ESTATES TAIL.

- That A. seised of lands before the statute of uses, to the use of defendant and M. her husband and the heirs of M. whom defendant survived. Replication, that defendant suffered a recovery in *formeden per fraudem, per quod* plaintiff, being the person to whom the lands belonged, after the death of defendant, entered by force of the statute of 11. H. 7. Demurrer, *Ra.* 642. *Plo.* 39.
- That A. being seised, covenanted to stand seised to uses in tail, and the lands came to defendant. Demurrer, *Ra.* 659. *Plo.* 298.
- That T. seised, devised to wife for life, remainder to R. in tail, remainder to heirs of T. the wife, in a common recovery vouched R. to warranty, who vouched the common vouchee to the use of the wife for life, remainder to R. in fee; the wife died, and lands descended to defendant. Replication, confessing the devise, pleads the statutes to prevent common recoveries suffered by tenants for life, and that remainder of the lands in tail descended to plaintiff. Demurrer, *Co. Ent.* 654. Like, on seoffment to uses in tail where several defendants plead to several parts of the lands which they claim under devises for years, *Ibid.* 667.
- That A. seised, covenanted to stand seised to uses in tail, and lands came to defendant. Replication, proviso not to alienate lands, and defendant suffered a common recovery, *per quod* he forfeited lands, and plaintiff entered for the forfeiture. Demurrer, 1. Co. 80.
- Plea as to part of lands, that F. being seised made seoffment to his own use for life, remainder to D. in tail; F. enfeoffed R. in fee, *per quod* D. entered for the forfeiture, and devised to R. for years, who enfeoffed defendant in fee; and to the other that D. seised in tail by said seoffment, sold the lands to defendant by indenture enfeoffed. Replication to both pleas, that F. being seised made said seoffment with clause of revocation, &c. which he made. Rejoinder, that by another deed he released the power to revoke. Demurrer, 1. Co. 107.

IN THE CIVIL DIVISION.

2. TITLE LESS THAN FREEHOLD. (6)

(See Pleas of Right of Common, *post.* and Distresses Damage Feasant, *post.*)

Vol.

IX.

Page.

24. Plea (to declaration for entering plaintiff's house, assaulting, imprisoning, and expelling). 1st. Not guilty. 2d. That A. B. and C. his wife, in right of his wife, were seised of the said house in which, &c. and demised same to one of the defendants, by means of which he entered, *giving colour* to plaintiff under a pretended demise made to plaintiff by A. B. and C.; that the defendant in his own right, and the other defendants as his servants entered the house, made a noise, and disturbed, and expelled plaintiff from the possession of the house, as they lawfully might. 3d. Licence. 4th. *molliter manus imposit* to put him out of the house. 5th. To preserve the peace, charged defendant with a *conscience* and in aid of the officer *molliter manus imposit*. REPLICATION, that after defendant became possessed of the house in which, &c. he demised the same to plaintiff, and that before the end of the demise defendants *de injuria*, &c. broke and entered, and made a noise, and expelled plaintiff. Issue on the other pleas.
26. REJOINDER, admitting the demise from defendant to plaintiff, but that the same was duly ended, and
27. issue to the residue of replication. SURREJOINDER, that demise was not duly ended.
28. Plea (to trespass, for entering building, cutting holes in the wall, laying timbers therein, &c.), that E. G. seised of a stable, whereof the said building is part, demised to B. J. who died intestate, administration granted to M. T. who entered, and assigned premises to defendant, *giving colour under a prior deed of demise* that defendant entered, &c. REPLICATION, that after the assignment defendant demised the building to M. T. who assigned to T. P. who afterwards assigned to plaintiff, and *de injuria*, &c.
30. Rejoinder. (See Declaration, p. 106.)
31. Plea (to trespass, for entering close, destroying gates and fences, and breaking to pieces locks, &c. p. 113.). 1st. General issue. 2d. Leave and licence.
107. 3d. Bargain and sale to defendant of the pasturage, thereupon defendant put in cattle, and because gates were locked, &c. as he lawfully might do, pulled off the locks. Replication, issue on the licence to third plea, *de injuria sua*, &c.
109. Plea (to declaration for pulling down plaintiff's shed and building house, &c. whereby plaintiff was hin-

IX.
181. *demised from enjoying his close, p. 132.* *18.* Not guilty. *2d.* That A. B. feised, demised the same to one of defendants, giving colour to plaintiff under a pretended demise from A. B. to plaintiff, and that defendant and his servants, because the shed was wrongfully erected, and doing damage, considered defendant in his own right, and the rest as his servants and by his command, pulled down the shed, and removed the materials to a proper place for the use of plaintiff, and that they erected the house, as it was lawful for them to do. *Rejoinder.* That defendant afterwards demised to plaintiff, and *de in-
 182.* *jurio suo, &c.* *Rejoinder,* defendant did not demise.
184. *Plea* (to trespass, for entering close and pulling down hedges, &c.), that defendant as tenant from year to year of tenant in fee of a close adjoining locus, has a prescriptive privilege of watering horses, &c. departing in his said close, in a brook which runs through locus, and of passing with them from his said close over locus to the brook, and so back again; and because the way was so obstructed by the hedges removed them. *New assignment and
 185.* *colour given;* that plaintiff brought his action against defendant for entering a close called A, and not for entering the close B. as supposed in the plea. *Re-
 186.* *plication, &c.*
187. *Plea,* justification under demise for seven years, giving colour of demise to plaintiff for life.

Plea (to trespass against J. for menaces), that said J. held of defendant by fealty and services that he held at will, *Ra.* 662.
 That archbishop feised, demised to J. and R. for years, R. survived, and archbishop demised to him and his wife for years in reversion, R. is *felu de se*, and king, after inquisition, granted lands to defendant. *Demurrer, Ra.* 608. *Flo.* 254.
 That T. feised, levied a fine *sur cognizance de droit*, with proclamations to J. in fee, and demised to defendant. *Replication,* that H. was feised until T. disseised him, and levied a fine, H. re-entered within five years, and died, from whom it descended to W. who demised to plaintiff. *Rejoinder,* maintaining plea, and traverses disseisin, *Co. Ent.* 673.
Plea of demise. *Replication,* plaintiff feised of lands in right of his wife, who recovered on a writ of dower by default on summons and grand cape, *2. Bro.* 287.
 That the queen, being feised, demised the tenements in the new assignment to R. for years, which after several assignments and bequests came to B. who granted to defendant, who gives colour. *Replication,* plaintiff consents all the grants and assignments to R. and says that R. granted his estate to plaintiff, and traverses that he granted to defendant, and issues, *1. Bro.* 350.
 That K. feised of lands for life, demised to plaintiff for a year (except wood), who entered, and defendant as servant of K. entered and cut the wood. *Replication,* that K. demised to plaintiff lands in the new assignment without any exception, and traverses the demise *propt.* and issues, *2. Bro.* 232.
 That L. feised of the close in which, &c. demised to defendant for ten years, who demised

- demised to plaintiff for seven years, on condition of re-entry for rent unpaid, and because rent was in arrear defendant re-entered, *Tbo.* 310.
- That C. seised of lands, demised to defendant for years, and gives colour, *Tbo.* 310.
- That W. seised, demised to K. for years, who assigned to T. who made defendant executor, and gives colour to plaintiff for demise for life, *Tbo.* 329.
- That the bishop of L. seised in right of his bishoprick of lands, demised to M. for years, who demised to J. who assigned to R. and defendant as his servant took and carried the dung damage feasant there, *Tbo.* 404.
- That plaintiff demised to defendant for a year, and so from year to year at will, defendant sowed the close before the determination of the will. Replication, that before sowing the close it was agreed that defendant should hold the close to such a day, and not longer, and traverses that defendant quietly enjoyed the close beyond the day, and issue, *Tbo.* 407.
- That plaintiff's father, seised of houses and lands, demised to plaintiff and others for life, rendering rent; father died, and reversion descended to defendant, who entered for rent unpaid into the close and took a cow as a distress. Replication, *de injuria*, *Wi. Ent.* 984.
- Justification, damage feasant under a demise for twenty-one years; plaintiff prescribes for a sheep-walk or common under a demise of the like term, Demurrer, *Le. J. Ent.* 209.
- Replication (to plea of freehold), that before defendant had any thing in the tenements H. was seised, who demised to G. for years, if three should so long live, and G. assigned to plaintiff, with averment that G. and others are alive. Rejoinder, confessing the demise, but that G. surrendered the term to W. who enfeoffed defendant, and traverses that G. assigned to plaintiff, *Wi. Ent.* 992.
- That H. seised of lands, demised to defendant, who took the cattle damage feasant there, and gives colour. New assignment thereto. Same plea to new assignment. Replication, prescribes for common. Rejoinder, maintaining bar, and traverses prescription, *Wi. Ent.* 1000.
- That plaintiff, seised, demised to defendant for years. Replication, that plaintiff was seised in fee until the trespass, and traverses the demise, and issue, *Wi. Ent.* 1003.
- Replication (to plea of freehold in close and house), that before defendant had any thing of the warden, &c. of the company of fishmongers of L. demised to plaintiff for years, rendering rent, who was possessed till the trespass. Rejoinder, confessing the demise, but that it was a demise on condition of re-entry for rent unpaid; and that the warden, &c. of the company granted reversion to three, from whom, by several assignments and meins conveyances the reversion came to W. who entered for rent unpaid, who enfeoffed defendant, who broke the close as his own close. Rejoinder, confessing the grant of the reversion to three, amongst whom partition was made, by which the condition of re-entry was extinguished. Demurrer, 2. *Lut.* 1007.
- That B. seised of an ancient sheep-walk and liberty of pasture for sheep, not exceeding four hundred, by indenture demised to defendant for years, who put in his sheep. Replication, *de injuria*, and traverse that B. was seised of an ancient walk at the time in which, &c. or ever afterwards. Rejoinder, that he was seised. Demurrer, *Bra. R.* 490.
- That prebendary, seised of messuages, demised to defendant for fifty years, rendering rent, and the bishop and chapter confirmed the estate to defendant, who gave colour to plaintiff. Replication, priesting, &c. pleads that no number of years was written in the demise confirmed by the bishop, and traverses that the bishop confirmed the term to defendant, and issue, *Pl. Gen.* 609.
- That A. dean and chapter, seised in right of the church, demised the manse and rectory to defendant, who gives colour. Replication, that before A. had any thing of R. the dean and chapter being seised demised to plaintiff, who was possessed

INDEX TO LEADING TITLES OR HEADS

- seised until the trespass. Rejoinder, maintaining the bar, and traverses that R. the dean and chapter, demised to plaintiff, *W. Ent.* 613.
- That abbot, seised, demised lands, naming them by deed indented to husband and wife for lives, remainder to W. for life, remainder to defendant for life. Demurrer, *Ra.* 657. *Plo.* 21.
- Plea (as to houses and one hundred acres of land), that J. being seised, demised to defendant for years, rendering rent, and as to one hundred acres of meadow, that abbot, seised, demised to defendant for years, rendering rent. Replication to first plea, that demise was on condition of re-entry for rent unpaid; and that J. granted reversion to plaintiff, who entered for rent unpaid. To 2d Plea, that demise was under like condition, and the abbot surrendered to the king, who granted to the plaintiff, who entered for the rent unpaid. Demurrer to first replication, and to second tender. Demurrer, *Ra.* 658. *Plo.* 164.
- That plaintiff, seised of houses and lands, demised for years to R. who made M. his wife executrix, who married L. and defendant as servant, &c. Replication, that plaintiff was seised in fee until, &c. and traverses the demise, *Ra.* 655.
- That E. prebendary, seised, demised to defendant at will. Replication, that N. seised, enfeoffed plaintiff, who was seised until the trespass, and traverses that E. ever had any thing in the lands. Rejoinder, that he was seised in fee, *Ra.* 656.
- That D. seised, demised to defendant at will. Replication, that R. died seised of lands which descended to defendant's wife. Rejoinder, maintaining the plea, and traverses that R. died seised, *Ra.* 656.
- That J. seised, demised for years to defendant and others whom he survived. Replication, that D. possessed by virtue of a demise, assigned the term to C. who assigned to plaintiff. Rejoinder, maintaining the bar, and traversing the assignment, *Ra.* 656.
- That T. seised, demised to defendant for years. Replication, that said J. demised for years to S. who assigned to plaintiff, and that the said demise was made to defendant by fraud. Rejoinder, that the said demise was made to defendant *bonâ fide*, and traverses the fraud. Repleader thereto awarded for insufficient replication. Replication *de novo* confesses the demise to defendant, but pleads that J. demised for years to S. who assigned to plaintiff, with averment of the fraud. Demurrer, *Co. Ent.* 677.
- That M. seised, demised to defendant for seven years, rendering rent. Replication, that M. demised to defendant for one year, and after the year ended entered and demised to plaintiff for years, and traverses the demise to defendant for seven years, *Vett. Int.* 238.
- That W. seised for twenty years demised to J. who granted to defendant for twelve years. Replication, that J. being possessed by virtue of the demise, demised to defendant for four years, and afterwards granted to plaintiff to hold from a certain feast-day for sixteen years, and traverses the demise to defendant for twelve years, *Vett. Int.* 239.
- That T. seised, demised to defendant for year. Replication, that before the demise of T. on the marriage of his son agreed to stand seised to the use of his son and of his wife, and after marriage was seised to that use, and promised them to take the profits; the son died, and after his death T. entered seised to the use of the wife, and demised to defendant. Rejoinder, that at the time of the demise of T. he was not seised to the use of the wife, *Upp.* 145.
- That the master and fellows of college, seised of the manor, demised to defendant for years. Replication, 31. H. 8. of dissolutions for making void demises made by a college where the other demises were subsisting; and that the master, &c. made a prior demise which was in *esse* at the time of the demise made to defendant. Rejoinder, maintaining plea, and traversing first demise, *Upp.* 196.
- That J. being seised, demised to C. for years, who devised the term to defendant. Replication, that J. before the demise made feoffment to uses. Rejoinder,

main-

maintaining the plea, and traverses the feoffment to ess before the death.
Upp. 196.

Replication (to plea of freehold), that before defendant had any thing H. being
seised, demised to D. who assigned to plaintiff. *Rejoinder*, confessing the demise,
says, that D. surrendered the term to H. who enfeoffed plaintiff, and traverses
that D. assigned the term to plaintiff, *Her. 715.*

Replication (to plea of freehold damage feasant, to trespass for taking cattle), that
defendant demised to plaintiff for years. *Rejoinder*, maintaining plea, and tra-
verses the demise, *Upp. 171.*

COPYHOLDERS.

That G. seised of the manor whereof, &c. granted copyhold lands in fee to W.
who demised to defendant for one year, and gives colour. Replication, that lands
were plaintiff's freehold, and traverses the copyhold, and issue, *Ro. 465.*

That lands are copyhold, and demisable for lives, and several customs, and that
lands were granted to R. in possession, and J. in reversion, who survived R. and
married defendant, who after the death of J. was seised of lands for her free-
bench, 3. *Br. 474.* Replication, that defendant after the death of J. entered
into tenements, and demised to S. for years, who died intestate, and plaintiff as
administrator, entered and sowed the close. *Rejoinder*, that he did not demise.
Tbo. 396. Nil dicit to similar plea, 3. *Br. 474.*

Plea to new assignment, that lands were copyhold and demisable for one or two
lives in possession and one life in reversion; that J. seised of the manor granted
tenements in reversion to defendant, who after tenant's death entered into that
possession, and gives colour to plaintiff by deed of demise for life, *Wi. Ent.*
588.

That abbot, seised of manor, whereof, &c. granted copyhold lands to J. and H.
his wife in fee; H. survived and surrendered to the use of R. son of J. who was
admitted, and from him lands descended to defendant. Replication, that lands
by the custom of the manor descended to the younger son, and that the abbot
granted the lands to J. who had issue R. and plaintiff, and died, and that the ab-
bot contrary to the custom admitted R. who died seised, after whose death abbot
granted lands to plaintiff restoring him to his right, and traverse that abbot
granted to J. and H. *Ra. 627.*

That J. seised of copyhold lands surrendered to use of plaintiff in fee, who was ad-
mitted, and from him lands descended to defendant. Replication, that plaintiff
surrendered to the use of S. on condition of payment of money, and tendered
money at the day which S. refused to accept, and surrender was void, and plain-
tiff re-entered. *Rejoinder*, that he did not tender, *Co. Ent. 657.*

That J. seised of the manor whereof, &c. granted to defendant for life in reversion,
copyhold lands demisable for two lives as well in possession as in reversion.
Her. 724.

That J. and E. tenants of the manor for life of E. granted customary lands to de-
fendant in fee. Replication that H. seised of the reversion of the manor after
the death of E. demised lands for years to C. who assigned to plaintiff, and tra-
verses grant by copy to defendant, *Co. Ent. 660.*

That T. seised of the manor, granted copyhold lands to defendant for life. Replication
that abbot, first seised, granted to R. for life, and afterwards granted re-
version by copy of plaintiff and others for lives. *Rejoinder*, that the abbot, be-
fore the grant in reversion, demised the manor to J. for years whose reversion
assigned to said T.; and B. 6. seised of the manor, after surrender of the abbey,
granted

INDEX TO LEASING TITLES OR HEADS

granted the manor to E. who levied a fine thereof to T. Surrejoinder, maintaining the grant in reversion by copy, and traverses demise of manor for years, *Co. Ent.* 682.

That C. seised of the manor, granted *copyhold* lands in fee to D. from whom it descended to defendant. *Replication*, that C. was seised of the manor whereof, &c. that descended to plaintiff, and traverse that lands are *copyhold*, *Upp.* 153.

That lands are freehold of C. and defendant as servant, &c. *Replication*, that lands are *copyhold*, and were granted by copy of plaintiff in fee. Rejoinder, that plaintiff forfeited lands by cutting trees. Demurrer, *Co. Ent.* 280.

Like plea and replication. *Rejoinder*, that plaintiff forfeited lands by suffering barn to be out of repair. *Surrejoinder*, that the lord expelled plaintiff, and demised to another, the barn fell down, and plaintiff re-entered, and traverses making wilful waste by permitting the barn to fall, *Co. Ent.* 280.

Rejoinder (to similar replication to like plea), that plaintiff forfeited lands by forging the roll of the customs of the manor. *Surrejoinder*, that plaintiff and other tenants agreed to put into writing the customs of the manor, and traverses the forgery, *Ra.* 280.

Rejoinder (to like replication to similar plea), that plaintiff forfeited lands for *not doing suit of court*. *Surrejoinder*, that the lord expelled plaintiff, and demised to the other, court was held, and plaintiff re-entered. Rebuter, confessing the expelling and demise, but pleads that plaintiff on a certain day re-entered, and afterwards the court was held, at which plaintiff made default. Demurrer, *Co. Ent.* 280.

Plea, that lands are defendant's *freehold*. *Replication*, that they are *copyhold*, and were demised to plaintiff by copy. *Rejoinder*, maintaining freehold, and traverse grant of copy, *Co. Ent.* 280.

Replication to similar plea, that the king, on avoidance of a bishoprick, granted the lands in fee by copy to J. who surrendered to use of plaintiff who was admitted. *Rejoinder*, confessing the replication, but pleads that the lord of the manor used to have a reasonable fine on admission, and that plaintiff forfeited lands for the fine unpaid. *Surrejoinder*, that fine was not reasonable. Demurrer, *Co. Ent.* 645.

That prior, seised of the manor, granted *copyhold* lands to defendant and two others for their lives, whom defendant survived. *Replication*, that by the custom of the manor copyholders forfeited their lands for non-residence, and defendant was not resident. *Rejoinder*, that he was not resident within the manor, and not without, *Upp.* 157.

That T. seised of the manor, demised it for years to C. and others, who for certain causes seised the customary lands whereof F. and G. his wife were seised in fee in right of E. and granted them in fee to M. to whom F. and G. released their right, M. took baron, and they surrendered to the use of defendant, who was admitted in fee. *Replication*, that E. died seised of the lands which descended to plaintiff, who was seised until the trespass, and traverses the release, 3. *Br.* 463.

That *rector* of church in London, by consent of churchwardens and *vestry*, demised the houses to support a chapel. *Replication*, that E. 6. seised by the statute of dissolutions, granted in fee to M. who granted to plaintiff, and traverses the demise by the parson and others, *Upp.* 133.

Plea, ~~not~~ guilty to all except five oaks and five elms, and to the rest justifies by a ~~lease~~ made by plaintiff and others to J. W. &c. for their lives of one messuage; with covenant on the part of the lessees for repair of the said messuage, for which purpose it should be lawful for them to take on the premises by the allowance of the bailiff convenient timber; that the house was out of repair, and that the bailiff

IN THE CIVIL DIVISION

bailiff on request allowed lessees to cut fit and convenient timber, &c. for which &c. being necessary, part being used, and the residue to be used if plaintiff had not forbid it. Replication, *de injuria*, &c. traversing bailiff's allowance to cut the said five oaks and elms. Demurrer, for that plaintiff had traversed matter not traversable, and traverse held bad, but judgment for plaintiff because the plea was bad, for that it was not pleaded that the bailiff had allowed a certain number of trees, 2. *Lut.* 1471.

Plea (to declaration for striking his horses and battery of servants, so that, &c.) that the mayor, &c. of B. *was possessed of an acre*, &c. called the key, and that the servants of plaintiff endeavoured to unload certain horse loads of soap ashes on the said acre which, &c. and justify *absque hoc* that they are guilty otherwise or elsewhere out of the said acre. Demurrer and judgment for plaintiff, for that the defendant's plea is that they *endeavoured and would discharge*, and not *with certainty* that they were on the land or near it, 2. *Lut.* 1496.

Plea scoffment to uses in tail, where several defendants plead to different parts of the lands, which they claim under *demises for years*, *Co. Ent.* 667

3. Tenancy in Common. (7) (See *Liberum Tenementum, ante.*)

4. Right of COMMON of

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|--------------|---|-----|
| 1. Estovers. | } | (8) |
| 2. Fishery. | | |
| 3. Pasture. | | |
| 4. Turbary. | | |

2. Fishery. (9)

Vol.

IX.

Page

173. Plea (to trespass to plaintiff's fishery, p. 172.) 1st, Not Guilty. 2nd, Justification, defendant fished by command of his master in right of common of fishery appurtenant to two ancient mills, of which he was seised in his demesne as of fee, and pulled down a little of the rails in order to enjoy fishery, with other

176. pleas, *Replication* to 2d plea, traversing right of common to fishery; to 3d, *de injuria*, issue. 4th, novel assignment; to part of 2d. 5th, traverse and issue.

179. Plea (to trespass to fishery, p. 178.) that the *locus in quo* is part of a navigable river within the flux and reflux of the tides of the sea, in which every subject has a right of fishery; *similiter* to 1st plea, and *nolle prosequi* to 1st Count of declaration, to which the plea is a justification, and opinions on the *plea* and *nolle prosequi*.

180.

That W. was seised of the manor of B. extending to the end of the water which is the fishery in which, &c. and plaintiff is seised of the manor of A. extending to the middle *fil* of the said water, and that W. and his ancestors were seised of the fourth part of the water as parcel of his manor, and had common of pasture on the north part, and defendant, as servant, &c. Replication, that the water on each side is the several fishery of plaintiff as parcel of his manor of A. and traverses seisin and prescription alleged by defendant, *Ra. Ent.* 666. *Vet. Ent.* 160.

INDEX TO LEADING TITLES OR HEADS

That defendant seised of houses and lands had common of fishery upon the banks of the river. Replication, *de injuria*, &c. and traverses prescription, *Ra. Ent.* 666. *Vet. Int.* 56. *Ass.* 442.

That *locus*, &c. is defendant's freehold; Replication; that plaintiff, seised of houses and a yardland of land, had seven stalls for a several fishery for nets fixed in the sea at seasonable times in the fishing season. Rejoinder, that *locus* is the freehold of defendant, *covered with water*, &c. and traverse prescription alleged by plaintiff, *Ra. Ent.* 667. *Vet. Ent.* 162.

That *locus* is a port running out of the sea, in which defendant being seised of the manor had common of fishery. Replication, that plaintiff seised of another manor had common of fishery in the harbour, and that defendant *de injuria*, &c. traversing prescription, *Ass.* 440.

3. Right of COMMON of Pasture. (See Right of Way, *post.*)

VOL.

IX.

Page.

141. Plea (to declaration for entering closes, &c. p. 138.) right of common of pasture to part of premises, with common of pasture appurtenant.

189. Plea (to trespass for breaking close, treading down grafs, &c.) that *locus*, before the wrongful inclosure thereof, was parcel of a certain common parcel of the manor of A. of which said manor F. W. and J. B. were seised in their demesne as of fee, and because certain persons, to defendant unknown, had erected the gates upon *locus*, and there separated and shut up *locus* from the residue of the said common, and because the plaintiffs kept up the same, defendants entered as servants of F. W. and J. B. and by their command into *locus*, and trod down, &c. as being the close of F. W. and J. B. REPLICATION, *similiter* to 2d plea, *de injuria*, &c. and traverses

191. *locus* being parcel of the manor of L. To 3d and last pleas, new assignment that *locus* is another and different close from the close mentioned in defendant's plea, and not parcel of the manor. REJOINDER, taking issue on the traverse, plea to the new assignment. 1st, General issue. 2d, that it is the same close, and stating the abutments. REPLICATION to new assignment; *similiter* to General issue; rejoinder, *postea* for plaintiff to first issue. To 2d, that *locus* is not parcel of the manor as alleged by defendants in 2d plea. To 3d, Not guilty. To 4th, that the freeholder has right of common in *locus* in right of his messuage and land. 5th, in right of messuage only.

197. Plea (to declaration for entering plaintiff's close, pulling down fences, treading down grafs, and consuming with cattle, and turning up soil with waggon), 1st, Not Guilty. 2d, that defendant put his cattle into *locus* as tenant in fee of 1000 acres of land, in

right

IN THE CIVIL DIVISION.

Vol.
IX.
Page

- right of which he is entitled to common over *locus in quo* for all cattle levant and couchant, and because fences were wrongfully erected, justifies removing them; prescribes for common of pasture entered and *abated nuisance*. 3d, that *locus* was customary tenement, and a custom to inclose after presentment at court baron. 4th, prescription to dig sand, &c. for repairs, &c. and because fences were wrongfully erected, pulled them down. REPLICATION, to 2d plea admits the common of pastures, and says, sir J. R. seised, &c. inclosed *locus*, and became seised in severally and demised for 900 years. Rejoinder, that plaintiff had wrongfully inclosed *locus*, under pretence of holding it in severalty by way of approving, traverses sufficiency of common left. Demurrer to replication to 10th plea; surrejoinder; joinder in demurrer; continuance by *cur. adv. vult. postea*. *Tules circumstantibus* as to some issues; Not guilty to other; plaintiff in mercy.
305. REPLICATION (to plea of justification, driving plaintiff's sheep, because they were wrongfully intermixed with the defendant's), that within the manor of B. there is a large open field containing the lands of different freehold and copyhold tenants, and that by custom it is divided into three shifts, and so tilled that one shift should every year lie fallow, over which fallow the owners of the said lands had a *right of common* for a limited number of sheep, and that there is a custom within the manor that all commonable sheep should depasture together in one flock called the great flock, and that they should be folded together for a limited number of nights in rotation on each of the tenant's land for the melioration of the soil; plaintiff, as tenant from year to year of copyhold lands in the said open field under the lord of the manor, claims a right to put in ten sheep, which were feeding and depasturing there until the defendant *de injuria*, &c.
308. REJOINDER, protesting that the lord is not seised of the manor, protesting against the custom for right of common says, that the sheep were wrongfully intermixed with defendants, and traverses the custom of feeding and folding in one flock.

Plea (to trespass against W. and B. for driving sheep and impounding them a long time without food); by W. as to all except two sheep, *non cul.*; by B. as to all except fifty-two impounded for part of a day and one whole night, *non cul.*; and to those that T. seised of 300 acres of land, in which, &c. demised them to defendant W. for years, and that the prebendary had *common of pasture* in the same for fifty sheep, and was used to keep a shepherd to preserve them from mixing with sheep of occupiers of the lands; the prebendary demised to plaintiff for a year, who put fifty sheep into the lands without a shepherd, *per quod* his sheep were mixed with defendant W's. sheep, and defendant B. as servant to W.

drove the said fifty sheep with W's. sheep into a fold, to take care of and guard W's. sheep from disease, and put them out within three hours, and afterwards on the same day the said fifty sheep again became intermixed with sheep of defendant W. *per quod* B. drove them into a fold in an adjoining field to manure the land for that night, and as to two sheep residue both defendants justify taking them *damage feasant*. Replications (severally) *de injuria*, &c. 3 Br. 411.

Plea (to trespass against A. B. and C.) by A. and B. separately; that T. seised of two several messuages and lands, had *common of pasture* in the close *in quo*, &c. for all commonable cattle, on tenements levant throughout the year. T. demised one messuage to A. and the other to B. who separately possessed, put in their cattle and prostrated the walls. Plea by C. that being seised of the messuage and lands had common as above. *Replication*, severally confess the several prescriptions, but that he is seised of the manor whereof the close *in quo*, &c. containing 2000 acres is parcel, and that he *inclosed* part of the common with avement that defendant had *sufficiency of common* in the residue. Rejoinder to each replication, protesting that close did not contain 2000 acres, pleads that they have not a sufficiency of common in the residue, *Tho.* 352.

That defendant seised of messuages and lands had *common* in 600 acres of pasture, whereof *locus*, &c. for all commonable cattle levant throughout the year. *Replication*, that 600 acres of pasture was a waste, and that R. seised of the same lands before the statute of uses, encosied T. and others to his use in tail, and built a house upon the lands, and the *locum*, &c. *extra easdem* he inclosed, and pleads 3 E. 6. for inclosing commons, lands descended to J. who demised to plaintiff. Rejoinder maintains plea, and traverses seisin of R. and issue thereon, *Ro.* 461.

Plea (to trespass against W. and N.), by W. that seised of the messuages and three quarters of a yardland of land, had *common* in *locus* in the new assignment parcel of the field every year, in which the field should be sown with pease for the cows, &c. from the vigils of Pentecost, until the corn and hay be carried away from the 1st of August, for nine horses tied until the corn be carried off from thence; for nine horses loose, twelve cows, sixty sheep, and for pigs until the field sown with wheat, and from thence to the Purification, and to throwing down hedges and ditches on another day. Plea, that plaintiff *inclosed* lands with hedges and ditches, which defendant threw down to enjoy his common. Like plea; by N. *Replication* to both pleas, W. *de injuria*, &c. traverses prescription, and like replication to plea of N. two issues, 2. Bro. 262. Co. Ent. 648.

That *locus* was parcel of a common field, and J. and his wife, in right of his wife, seised of messuages and lands, had for themselves and tenants *common of pasture* in the field for 100 sheep, on messuages and lands levant every year, when the field was sown from time when the corn and hay is carried off, till the field or any parcel thereof be re-sown, and every year when it lies fallow throughout the year, demised to defendant for one year, who put in his sheep, *Tho.* 338.

PASTURE.

Plea (by one defendant), that W. seised of a manor had *common in locus*, &c. for himself and customary tenants of the messuage and land for all commonable cattle levant every year from Lammas, until the feast of the Annunciation every second year throughout the year, and every other as before, and if the hay every other year should be sooner carried off, then immediately after the hay carried off to the feast of the Annunciation. W. granted to defendant who put in his cattle. Like plea by tenant at will. *Replication* maintains the declaration, and traverses each prescription, *Tho.* 3.

Replication (to plea of freehold), that J. seised of the manor, had for himself and all his customary tenants *common*, &c. for all commonable cattle every year on

IN THE CIVIL DIVISION.

Lammas, till the feast of the Purification. J. granted to plaintiff, who put his cattle. *Rejoinder* maintaining plea, and traverse prescription and issue. *Tho.* 379.

Plea of prescription by lord of the manor to have common of pasture in loco called for all cattle throughout the year, and in the common, by and through water, &c. to a water called E. to water his flock and herd there. *Replication* and traverse the prescription, 1. *Bro.* 340.

That defendant being possessed of 120 sheep, plaintiff so grievously chased them, that they received damage; to preserve them, defendant *molliter manus imposuit* on plaintiff. *Replication*, that plaintiff seized of messuages and lands had common in for all cattle (except sheep) from day to day every year, and because defendant's sheep were in his common *damage feasant*, he gently chased them, on which defendant made an assault upon plaintiff. *Rejoinder*, confesses the prescription and says, there is a custom for all the inhabitants of H. where he resided every year, to drive the sheep from H. to a river beyond said common to wash, and so back, and defendant and his servants drove the sheep without stopping beyond the common to the river. *Sur-rejoinder*, protesting that there is no such custom; for plea says, that the sheep were *extra viam*, and traverses that defendant drove them without stopping, and issue, *Tho.* 324.

That T. seized of manor had for his customary tenants common in loco in the new assignment, &c. every third year, when lands lay fallow, for three rams, from the 1st of A. to M. and for all beasts of the plough, until the feast, &c. for all commonable cattle (except, &c.) until the feast day, &c. that defendant is customary tenant, and put in beasts of the plough. *Demurrer*, *Tho.* 418.

That as to piece (*pecia*) part of the moor in the new assignment, that it is parcel of a waste called B. and R. and adjoins to a great waste called W. and that defendant seized of messuages and lands had common of pasture in the waste called W. adjoining locus, &c. without fences, and in locus, &c. *per casu de vicinage*. *Replication de injuria*, and traverses prescription of common *causa vicinagii*, *Wi. Ent.* 971.

That defendant, seized of three yardlands of land, had common in the field whereof, &c. for 120 sheep for two years together after corn cut, till re-sown, and every year when it lay fallow for the whole year, and put in sheep. *Replication de injuria*, &c. and traverses prescription, *Wi. Ent.* 981. 2 *San.* 2. for all commonable cattle, *Ibid.* 4. and judgment for defendant.

That H. seized of lands, demised to defendant for years, who took cattle *damage feasant*, and gives colour. *Replication*, that plaintiff seized of lands, had common in loco in the new assignment for all cattle throughout the year. *Rejoinder*, maintaining plea and traverses prescription, *Wi. Ent.* 1000.

Plea to new assignment, prescriptive of common. *Replication*, that B. seized, demised to plaintiff, traverses prescription and issue, *Wi. Ent.* 1002.

That defendant, rector of a church, seized of messuages and lands in right of the church had common of pasture in loco in the new assignment for all commonable cattle on the tenements levant every year from the day of St. Michael at noon, to the day of St. Philip and James at noon, and put in cattle to use common, 1. *Bro.* 341.

That defendant being seized of thirty-seven acres in a field called C. had common of pasture for thirty-seven sheep on lands levant in the same field throughout the year when it lies fallow, 1. *Bro.* 342. Like plea for all cattle. *Replication de injuria*, traversing prescription, *Wi. Ent.* 976.

Plea of justification as servant to J. H. who hath liberty of *faldage* for his sheep by prescription in the place new assigned, when the same lies fallow. *Replication de injuria*, and traverses the land lying fallow. *Rejoinder*, and issue on the traverse, *Bro. Vad.* 423.

INDEX TO LEADING TITLES OR HEADS

Plea G. seised of the manor had liberty of *foldage* and *pasture* for forty sheep in a field called K. every three years, viz. first, in the north part of the field, whereof lands in the new assignment are parcel, second, in the south part; third, in the other part from feast day to feast day, and demised to plaintiff for twenty-one years, who granted the estate of defendant, who put in his sheep. *Replication, de injuria*, and traverses the prescription, 2 Bro 256.

That F. seised of fifty-one acres of land had liberty of *wildage* and *pasture* for sixty sheep *in locus*, &c. every year when it lays fallow from feast day to feast day, and when any part shall be sown in the residue for the same time, and defendant as servant put in sheep. *Replication*, protesting, &c. pleads *de injuria*, &c. traversing prescription and issue, 2 Bro 286.

That T. seised of the manor of W had for himself and tenants *common of pasture* in his closes for all commorable cattle within the manor levant throughout the year as belonging to the manor, and appointed defendant to have the care of his cattle put in upon the common, who as his servant entered the close to see the cattle, but does not say that he put them there, or that they were let in. Demurrer, plea, *Lat. 1. San* 24.

Plea of prescription for *common of grass* for all cattle after the corn carried off, &c. bad, for that it does not lay *levens and cichens*. 1 Sm 340.

That locus is parcel of a field which used to be sown every second year, and prescribes under a lease from the principal and cellist of Queen's College at Oxon, for *common of pasture* every year, that the lord has treth, that locus, &c. was enclosed with walls, fences, and gates, so that he could not use his common, and that he threw down the walls, &c. and used his common, other defendants plead to be for common under K. L. by virtue of a lease for ninety-nine years, if the others so long live, and that locus, &c. was walled and fenced, and he entered and threw them open. Demurrer to both pleas and judgments, *Lev Lut* 219.

Plea, by tenant of copyhold land that it is inheritable of inheritance from ancestor to heir, and a supposed custom for every tenant to have *common of pasture*, in which, &c. (plea held bad) 2 Lut 1324.

Plea (to trespass for violently beating his cattle at R) *liberum tenementum* called S. *Replication de injuria*, &c. in issue. And to the trespass is in the second Count of the declaration plaintiff pleads a special prescription for *common* in one of the defendants, with necessary averments according to the prescription and to the residue of the cattle in the two Counts pleads *de injuria*, &c. traversing that the cattle were damage feasant. Demurrer to each replication, with causes, *Lut.* 1394.

Plea (to declaration for breach of his close, &c.) as to common law and new assignment of a close called M. that Millfield is a common held in B. and that one G. J. was seised in fee of a messuage, &c. in B. and that he, &c. from time whereof have *common of pasture* every year when the field was sown from the time that the corn should be carried off and in every year in which it should not be sown for the whole year, &c. and that in the year in which it was sown, &c. for which he put in the cattle of the said G. J. Demurrer and (it seems) judgment for plaintiff, for that it was not shown they were commorable cattle, 2 Lut 1464.

Plea as to part *non cul* to relieve justice from right of common. *Replication, de injuria*, &c. traversing plea and to the trespass. Demurrer, *Re Dec* 48.

Plea of justification, taking cattle damage feasant. *Replication*, that the earl of S. was seised of the manor of W. in fee, and preserves for him his farmers and tenants a sheep walk or common for sheep, not exceeding two hundred and fifty, in the premises every year when the said close was sown from harvest until re-sown, and when it lay fallow during a part of the year sets forth a conveyance thereof to the wife of A. M. for her life for her jointure, that the marriage took effect, the earl dies, and the courtlets demised to the plaintiff for twenty-one years; that the close

IN THE CIVIL DIVISION.

was sowed and the corn carried away, and before it was re-sown the plaintiff put in his sheep, and defendant drove them away. *Demurrer, Lev. Ent. 209.*

That prior being seised of the manor had *common of pasture* for himself and tenants to will in the lands after corn carried off until re-sown, and in the meadow after hay carried off until the feast day, and that every tenant is tenant at will. *Replication, that prior had not common of pasture, Ra. 622.*

Plea by two defendants severally, that they are seised of several messuages and lands, and have *common* in the closes every year, when they lie fresh for the whole year, and when sown, after the corn carried off, *Ra. 622, Vet. Int. 155.*

Plea by three defendants severally, that each is seised of a messuage and a plough-land of land, and have *common of pasture* in twenty acres of land called P. whereof, &c. for all cattle throughout the year, *Ra. 625. Vet. Int. 125.*

Plea (to trespass against A. B. C. and D. in N.) by A. that in R. there is a great pasture in which he has *common* for all his cattle throughout the year, and put his cattle there, and traverses that he is guilty in N. B. C. and D. pleads that S. being seised of six messuages and six oxgangs of land, had *common in the said pasture* for all cattle throughout the year. S. demised to B two messuages and two oxgangs of land, and like demises to C. and D. who being severally possessed put their cattle there, and traverse that they are guilty in N. *Replication, that all defendants are guilty in N, Ra. 626. Vet. Int. 135.*

Plea (to trespass against A. and B.) by A. that *locus, &c.* is a certain place called D. containing a certain number of acres, and extending, &c. and that being himself seised of three houses and sixteen acres of land, had *common* in that place for all commonable cattle within the limits aforesaid. Plea by B. that he seised of two messuages and two acres of land, had like common in the same place. *Replication, that loci in quibus, &c.* are the *locus* in the bar as well as another place called R. and *disensus montis, &c.* And to plea of A. says, that he was seised of the manor whereof, &c. and that A. *de injuria, &c.* made the trespass, and traverses the prescription; and like replication to plea of B. *non cul. to the new assignment, Upp. 148.*

Plea (to trespass against A. and B.) by A. that *locus* is 200 acres of pasture, parcel of *common pasture*, or moor, called C. in which he (A.) seised of messuages and lands, had common for all cattle throughout the year. Like plea by B. *Replication, that plaintiff is seised of the manor whereof, &c.* and that defendants severally hold messuages and lands of plaintiff as of the manor, and *ratione tenuræ* had common, and that plaintiff inclosed part of the common, and that defendants had sufficiency of common in the residue. Rejoinder, that defendants have not sufficiency of common in residue of the common, *Ra. 626.*

Plea (to trespass against A. and B. in four pieces of land, with *continuando* to one piece of land defendants freehold, and issue as to two other pieces. Plea by A. that he, seised of messuages and lands, had *common* there for horses, cows, and calves, from the 1st day of July, and for sheep from the 28th of September, until the feast of the Annunciation following every year, as long as the land lies fresh, and put cattle there for several years. Like plea by B. *Demurrer, Co. Ent. 675.*

That the king, seised of the manor, had *common of pasture* in the wood for himself and all his free and customary tenants for all cattle throughout the year, and defendants being tenants of the manor, put in their cattle, &c. *Replication, de injuria, &c.* traverses prescription, *Co. Ent. 656.*

That bishop, seised of several manors, had *common* in the field each year, of two years, in which it is sown after corn carried off, until re-sown, if it should be sown the next year; otherwise until the feast of the Purification; and if it should not be sown in either of the two years, then from Michaelmas until the Purification.

INDEX TO LEADING TITLES OR HEADS

- ... and every third year throughout the year, and like common in other fields, and in meadows and other parcels of land, from the cutting hay till Purification; if not cut, from Michaelmas to the Purification; and plaintiff *inseised* the field called B. with a ditch, in which he planted live trees, and defendant, to enjoy his common, on the third year broke down the hedges, and cut down the trees, and traverses being guilty at any other time, &c. And like plea to residue in the other fields, and that he put his cattle into the meadows, &c. and traverse that he is guilty on any other time than on the times alledged. *Replication*, that B. is a field by itself, extending, &c. and traverse that it is parcel of the field, and as to other places, replication *de injuria*, &c. and traverses prescription, *Ra. 623. Vet. Int. 185.*
- That locus, &c. contains one hundred acres of pasture called R. and eighty acres called H. and defendant seised of eight messuages, &c. had common in the said one hundred acres for eight oxen throughout the year, and traverses that he is guilty, with horses, &c. and had common in said eighty acres for all cattle levant, &c. from feast day to feast day, and traverses that he is guilty after the feast until the feast. *Replication*, that defendant is guilty of the trespass with horses, &c. and after the feast, &c. and does not answer to prescription of common. *Ra. 579. Vet. Int. 154.*
- That defendant holds one hundred acres in the field in which, &c. on the demise of the abbot lord of the manor, and abbot had common in the field after corn cut for two years, until re-sown, and on the third year of fallow ground for the whole year, and that in the year in which, &c. the field ought to lie fallow, and plaintiff maliciously to disturb defendant of his common sowed the lands the same third year. *Replication*, that the field is several soil, and traverse the prescription, *Ra. 622. Vet. Int. 123. Reg. Jud. 83.*
- That defendant and one J. seised of two furlongs of land had common in one hundred acres, whereof, viz. in the land after corn cut until re-sown, and when it lies fresh throughout the year, and in the pasture and wood throughout the year. *Replication*, that closes are several soil and freehold, and traverses prescription, *Ra. 623. Vet. Int. 124.*
- That S. seised of houses and lands, had common in the close till a certain day for all commonable cattle, levant, &c. throughout the year, and that T. seised of the manor whereof the said close is parcel, demised the said close to said S. for years, *per quod* the common was suspended (*suspens*); the messuages and land descended to defendant, who after the term ended put his cattle in the close to use the common. *Replication*, protesting that the close never was parcel of the manor; pleads *de injuria*, &c. and traverses the prescription, 3. *Br. 418.*
- That S. seised of messuages and lands, had common of pasture in the lands in the new assignment for all cattle throughout the year, and another prescription for cistovers. *Replication*, *de injuria*, &c. to each plea, and traverses both prescriptions, 3. *Br. 407.*
- Plea, prescribes for common of pasture for four hundred sheep. *Replication*, that defendant used common for five hundred besides the said one hundred sheep, and not guilty thereto, 1. *Br. 174.*
- That defendant, seised of the manor, had common in sixty acres of land, when sown after corn cut, until re-sown, and when they be fresh throughout the year, and land lies fresh, *Ra. 625.*
- That defendant, rector of the church, had common in one hundred acres of land every two years following, after corn cut, until re-sown, and every third year throughout the year when they lie fresh, and defendant put his cattle there after the corn carried off, *Ra. 624.*
- That rector of the church of W. had common in four hundred acres of land in R. within

IN THE CIVIL DIVISION

within the parish for one hundred and twenty sheep throughout the year. *Replevin* demised the rectory for years to S. confirmed by the patron and ordinary, and demised to B. who demised to defendant. Replication, *de injuria*, and *traverſes* the prescription, 3. *Br.* 433.

That biſhop, ſeiſed of ſeveral manors, had *common* in parcel of the land and wood for all cattle throughout the year, and plaintiff incloſed the land with pales, which defendant broke and cut, *Ra.* 625. *Vet. Int.* 189.

That prior ſeiſed of the manor, and T. of another manor adjoining, uſed to inter-*common* in the lands, parcels of the manors, *per cauſe de vicinage*, *Ra.* 625.

FALDAGE,

Plea (to treſpaſs in a piece of land with ſheep after a certain day), that the king, ſeiſed of the manor, in right of his Dutchy of Lancaſter had *paſture* and *faldage* in the ſame piece of land and elſewhere for a hundred and twenty ſheep for the whole year. The king demised for years to W. who made defendant and others executors; and to treſpaſs in another piece of land, that the king ſeiſed of the manor, had *paſture* called ſhack, for all ſheep in the ſame land, from the time of mowing, till the Annunciation. Replication to each, that plaintiff was ſeiſed of lands till the treſpaſs, and *traverſes* each preſcription, 3. *Br.* 437.

That defendant, lord of the manor and vill, had *faldage* there, and that in the county there is a cuſtom that the lords ſhould throw down the tenant's *faldage* erected without licence. Replication, *de injuria*, &c. and *traverſes* cuſtom, *Ra.* 646. *Vet. Int.* 160.

That inhabitants in ancient meſſuages of a vill had *common* for large cattle throughout the year, and for ſheep from feaſt day to feaſt day. Demurrer, 6. *Co.* 59. 3. *Br.* 446.

That inhabitants of the vill have *common* in a moor every two years following, from feaſt day to feaſt day, and every third year throughout the year, and plaintiff incloſed the moor with a hedge, which defendant broke to enjoy his *common*. Replication, *de injuria* and *traverſing* cuſtom, *Ra.* 624. Several replications *de injuria*, &c. *traverſing* preſcription, *Ra.* 622. 625. *Co. Ent.* 649. 656. *Vet. Int.* 189. 3. *Br.* 409. That plaintiff is ſeiſed of land in fee, and that land is ſeveral ſoil, in which defendant *de injuria*, &c. committed treſpaſs, and *traverſes* preſcription, *Ra.* 625.

(4) TURBARY to Dig, &c. (10)

VOL.

IX.

Page

188. Plea (to treſpaſs for taking turfs), that A. B. is ſeiſed of a common, and becauſe the turfs had been wrongfully dug, defendant as ſervant ſeiſed them.

216. Plea, 1st, General Iſſue. 2d preſcribes in common of paſture, and to dig ſlacks in *locus* for covering houſe, and repairing fences, and for neceſſary fuel. To the aſſault, that defendant was poſſeſſed of a quantity of turfs, which plaintiff endeavoured to take from him.

INDEX TO LEADING TITLES OR HEADS

Page.

219. Replication, *de injuria*, &c. traverses the whole.
221. Rejoinder, issue on the traverses.

PLEAS, &c. in Right of Common, &c.
And (See Distresses, Damage Feasant, and Defect of Fences, *Post.*)

PRECEDENTS in
BOOKS of PRACTICE,
REPORTERS, &c.

Plea in bar in trespass as to part; not guilty to residue.
Justifies for common of pasture by prescription, as a bur-
gess of the borough of D. for cattle levant and couchant

2. R. P. C. P. 52.

Plea (to declaration for shooting a greyhound, &c.) as to
part, not guilty; issue as to the residue, that the grey-
hound used to haunt a park, and to hunt, &c. the deer,
and being at the time when, &c. there for that purpose,
defendant as park-keeper justifies the shooting her. Re-
plication, that he did it *de injuria*, &c. *absque tali causa*,

Ibid 434.

Plea (to declaration in trespass for digging coney burrows,
not guilty; and a justification by defendant as having a
right of common, and that the same was surcharged with
conies, to the nuisance of defendant, and therefore he abat-
ed the nuisance. Demurrer and joinder,

2. *Wilf.* 51. 52.

Plea to trespass for breaking and entering plaintiff's close.
That an ancient messuage and twelve acres of land were
immemorially parcel, and a customary tenement of the
manor of A. and that there is a custom in the manor, that
from time whereof, &c. the tenant of the said tenement
has had right of common. Replication, traversing the
custom,

5. T. R. 2.

Plea to trespass for fishing in the plaintiff's *fishery*; that
the place is an arm of the sea, in which every subject has
a right to fish. Replication, claiming an exclusive right
by prescription, traversing the general right. Rejoinder,
traversing the prescriptive right. Demurrer,

4. T. R. 473.

Plea to trespass for breaking and entering plaintiff's close,
that every inhabitant hath been used and accustomed to
have common of pasture for all his horses and cows levant
and couchant,

4. T. R. 117.

Plea to trespass for breaking and entering plaintiff's house,
that defendant was seised in his demesne as of fee of four
acres of land, and that he had right of common of pasture in
the waste, and that plaintiff wrongfully and injuriously
erected a house, and inclosed part of the waste, whereby
defendant was prevented, &c. REPLICATION, that J. G.
being seised in his demesne as of fee, inclosed the spot and

approved

IN THE CIVIL DIVISION.

Vol.
IX.
Page

PRECEDENTS IN
BOOKS OF PRACTICE,
REPORTERS, &c.

3. T. R. 445.

approved the same, leaving sufficiency of common, and demised the same to plaintiff,

Plea to trespass, *quare clausum fregit*, that G. L. seised of several fishery in river A. adjoining to plaintiff's close, and justifies as servants, and prescribe a right in G. L. to open and draw nets on plaintiff's close. Replication, *de injuria*, &c. traverse of the prescription. Rejoinder, taking issue on the traverse, *postea*; writ, *si non omnes*. Special verdict, that P. M. being seised of the manors of B. and A. granted the manor of B. together with the fishery, to G. L. and that queen Elizabeth granted the manor of A. in which the river A. passes, to E. W. and R. B. and that their estate by several conveyances came to T. P. who demised to plaintiff; but whether the right of G. L. is extinguished in law by the unity of possession in plaintiff, and judgment for plaintiff,

2. Lill. Ent. 439.

Plea to trespass for destroying plaintiff's wheat by cattle, &c. prescribes in a right of common, and pasture of common for commonable cattle levant and couchant, after the mowing, reaping, and carrying away corn, &c. till the same fields be sown. Replication, traversing the prescription,

Ibid. 444.

Plea to trespass for chasing sheep, a custom of a manor, for the *recve to make a drift and drive off cattle surcharging common*,

2. Ld. Raym. 1186.

Plea to trespass for breaking and entering a close, part of a waste of a manor, a right of common, and of digging land; and also a custom, that if any person has been desirous to approve obtaining the consent of the lord, he might be presented by the homage of the court baron, and if the homage thought that such inclosure would be of no prejudice to any of the tenants, it hath been the custom to present, and a fine hath been set and stated that the homage had not presented. Replication to the first plea, a right of approving, leaving sufficiency of common to the last; a right to inclose under the statute of Merton, and did approve leaving sufficiency

2. T. R. 391.

That T. seised of the manor whereof, &c. granted copyhold lands to R. in fee, and defendants, as his servants, took the cattle damage tenant. Replication, that plaintiff, seised of messuages and lands, had common in lands in which, &c. for all large beasts on the tenements levant throughout the year. Rejoinder, protesting that plaintiff had not common for plea, that the cattle were not levant, and issue, *Ro. Ent.* 470.

That the earl of S. was seised of the manor of which locus, &c. and one messuage are parcel, that the said messuages, &c. are copyhold lands, and descendible by hereditary right called *tenant right*, from the ancestor to the heir, and that the said earl granted to them, by copy and custom, for every tenant to have common, &c. in the said four pastures, and there justifies damage tenant. Demurrer and judgment, that it is repugnant to say that lands are copyhold and yet descendible, *2. Lut.* 1324.

ESTOVERS.

INDEX TO LEADING TITLES OR HEADS

ESTOVERS.

That plaintiff is lord of the manor, and defendant is *copyholder* of houses and lands granted to him by copy in fee, that within the manor there is a custom, that as often as the messuages, &c. of each copyhold were in decay, upon demand in full court to be made for necessary trees for repairs, the lord of the manor or balliff ought to allow necessary trees upon the customary lands of that tenant there growing about such repairs, and if he should not allow it after demand, then the tenant, on the view of two other tenants, could cut necessary trees for repairs; defendant made demand in court, and because nobody would allow trees in convenient time, the defendant, on the view of two tenants, cut and carried away the trees. Replication, *de injuria*, &c. and traverses the custom, 2. *Bro.* 279.

Plea (to converting the oaks to his own use) *non. cul.* to residue, that R. B. was seised of the manor of S. whose estate, &c. the plaintiff had, and a custom for the lord to grant customary tenements by writing, sealed, or *only signed*, &c. grant by R. B. of customary messuages and lands to defendant by writing signed and sealed during the lives of the lord and tenant, death of the lord, and at the time of the trespass an ancient barn, parcel, &c. was in great decay, and defendant, for *necessary repairs*, rebuilt it, and cut the said oaks, and so converted them. Replication, that he applied to rebuild others. Demurrer, 2. *Lut.* 1390.

That plaintiff and his father, seised of messuages and lands, demised to M. for years, which after several assignments came to defendant, who cut certain trees for repair of the fences at convenient times, and if any were left for *housebote*. Replication, that plaintiff and his father were seised, that plaintiff survived his father, and was seised until the trespass, and traverses demise, 3. *Br.* 429.

That defendant seised of messuages, had reasonable *estovers* for *fuel* in the messuages. Replication, *de injuria*, &c. *Tho.* 410. *Wi. Ent.* 1001. Replication, plaintiff's freehold, and traverses prescription, *Upp.* 225.

That ancient messuage in the occupation of defendant was customary and parcel of the manor of B. within which there was a custom that every customary tenant of that messuage used to cut *underwood* in the lands in the *new assignment* for necessary *fuel* to be burnt within the messuage, which was granted to S. in fee, who demised to defendant for a year, who took *estovers*. Replication, *de injuria*, &c. and traverses the custom, 2. *Bro.* 272.

Defendant seised of houses and lands had reasonable *estovers* in the wood in the *new assignment* for repairs and *fuel*. Replication, plaintiff's freehold, traversing prescription, 2. *Bro.* 277.

That *locus*, &c. was a waste, in which defendant and all whose estate had common of pasture and *turbary* to dig the land and *estovers*, viz. that he digs the land, cuts the trees, and depastures his cattle in using the common, 1. *Bro.* 341.

That defendant seised of a cottage, used to cut *heath* growing in the close in the *new assignment*, to be burnt in the cottage. Replication, confesses prescription, and traverses burning the *heath* in and upon the cottage, *Tho.* 318.

That G. seised of messuages and lands had for himself and occupiers reasonable *estovers* in wood (except trees for inclosing), and being seised of a cottage had reasonable *estovers* for *fuel*, C. demised to defendant, who took the *estovers*, *Tho.* 327. Replication, *de injuria*, &c. traversing each prescription, *Tho.* 348. *Upp.* 225.

That defendant was customary tenant by *tenant right* of England, and that within the manor there is a custom for every tenant to cut trees growing for repairs, and because barn and hedges were out of repair, he cut and took the trees, *Tho.* 329.

That defendant was customary tenant of the manor, within which there is a custom that

that every tenant customary had *timber* of the assigning of lord of the manor, or his bailiff, for repair of buildings, but building being out of repair, and no timber assigned, defendant took and used it for repair of the messuage, *Tbo.* 377. That defendant, seised of messuage and half a yardland of ground, had reasonable *flowers* in lands (except certain trees) for *hedges* and *fuel*. Replication, *de injuria*, &c. traverses prescription, 3. *Br.* 458.

Plea to part of land prescribes in right of *common*, to cutting furze and brush, being himself seised of messuage, was used to cut furze and bushes growing on the lands in the new assignment *to be burnt* in the messuage. Replication to each plea, *de injuria*, &c. and traverse each prescription, 3. *Br.* 407.

Plea (to trespass for breaking close, depaupering grass, and cutting furze and brush) to breaking, &c. right of *common* of pasture in the lands in the new assignment for all his cattle, throughout the year, and as to cutting, &c. that defendant seised of the same messuage was used to cut furze and heath growing in the lands in the new assignment to burn in the houses. Replication to each plea, *de injuria*, &c. traversing both prescriptions, 3. *Br.* 407.

(2) Right of WARREN, CHASE, PARK, &c. (10)

VOL.
IX.
Page

221. Plea, defendant seised of a manor, prescribes for a free warren over *lucus in quo*, sets out a title from 41. H. 3. who granted his letter's patent to prior of Coventry, surrendered to H. 8. in 13. H. 8. who became seised, descent to Edw. 6. Mary and Eliz. who granted by letter's patent to T. T. and T. W. who bargained and sold to J. T. descent to J. T. his heir. descent from him to R. T. who bargained and sold to sir T. B. descent to his son, and from him to defendant. REPLICATION, that before defendant had any thing in the manor, &c. one T. T. in 1658, was seised in fee, fine levied by him and wife to T. B. and E. D. and mortgaged to J. C. who died intestate. Administration granted to T. C. who assigned to T. B. several assignments, and devise to C. H. who demised to plaintiff as tenant from year to year. To last plea, protesting prior not seised, and H. 3. and Eliz. did not grant, R. T. was not seised, and did not sell; insufficiency pleaded as before.
- 229.

Right of Warren, Chase, Fishery.

That J. seised of an ancient *warren*, made defendant his warrener, that plaintiff entered into the warren and made an assault upon defendant, who defended himself in the execution of his office, and traverse that he is guilty in any other manner or elsewhere out of B. *Tbo.* 397.

Plea

INDEX TO LEADING TITLES OR HEADS

- Plea** to declaration for breaking close, that he found two badgers in another close, and hunted them into the close in the new assignment, where they got under ground, and defendant dug them out of their hiding places and holes, and killed them, which is the same trespass, *Bro. R.* 483. 1. *Br.* 191.
- Plea**, custom in the county for all persons keeping dogs to *bunt* hares, 1. *Bro.* 335.
- Plea** to trespass for *killing two dogs*. Justification, that the dogs chased the deer in his park or chace, and killed one, on which defendant, as servant of E. T. knight, and by his command took the dogs, and to save the deer killed them. *Replication*, that the deer was out of the chace upon plaintiff's land feeding, and that he called the dogs to hunt them out, and they pursued the deer into the chace and there killed her; *absque hoc*, that the dogs drove or killed the deer in any other manner. Demurrer, and judgment for defendant, 3. *Lev.* 25.
- That** E. lord of the vill adjoining warren, and his tenants were accustomed to hunt there, 1. *Br.* 175.
- Plea** to breaking close, taking nets, and *assault*, that defendant was possessed of warren, adjoining close, &c. by *demise*, and that plaintiff, with others unknown, were chasing in the warren when defendant took the nets damage feasant, and pursued plaintiff and others into the close to discover them. *Replication, de injuria propria*, and traverses chasing in the warren, 2. *Br.* 3. *Br.* 421.
- That** bishop seised of a chace extending, &c. by prescription, had pannage for all pigs (except pigs of the owners of the place, &c.) within the chace, and the owner likewise had pannage for hogs found in the wood, (except the bishop's pigs and his tenants) and that plaintiff took twenty-two hogs belonging to tenants, which the bishop carried off for pannage. *Replication, de injuria propria*, and traverses that the wood is within the chace, *Ra. Ent.* 664. *Vet. Int.* 188.
- That** bishop seised of a chace extending into locus, &c. threw down the pales there erected. *Replication, de injuria, &c.* and traverses that chace extended into locus, &c. *Ra. Int.* 663. *Vet. Ent.* 187.

FISHERY.

- Plea** (to trespass against R. and W. for taking fish) to part by R. licence by plaintiff to fish in fishery, with leave to take salmon, and to other part R. and W. plead that B. is lord of the vill, and in right of the manor had fishery upon the banks of river running into W. and justify as servants, and traverse that they are guilty in E. and to residue, R. pleads not guilty, W. pleads not guilty to part, and to other part *prior recovery* for taking the same fish, and to residue not guilty, and to the assault *sen assaulti demesne*. *Replication* to each plea that he did not licence to fish, and that defendants are guilty in E. and that W. took more fish than specified in the former recovery and several issues thereto, *Ra. Ent.* 665, *Vet. Int.* 157.

3. RIGHT OF WAYS and WATERCOURSES.

1. Public.

2. Private.

1. By Grant or Agreement. (11,

2. Prescription.

3. Custom.

4. Necessity.

(Banks of Navigable Rivers—Towing Paths.)

Vol.

IX.

Page

233. Plea (to entering close, consuming grafs, and breaking down gates), that there is a *common highway* over *locus* to pass with horses and carts, and because the way was obstructed by the gates, defendant pulled them down, prescribes. *REPLICATION*, *de injuria*, &c. traverses *locus* being highway, and traverses right of way.
236. Plea that there is a public king's highway for all the king's subjects over *locus*, prescription for way over closes in order to enjoy them. *Replication*, *de injuria*, traverses highway, and right of way with *new assign-ment* Rejoinder, issue on the traverse, and *non cul.* to new assignment.
244. Plea (to trespass for entering close, pulling down rails, &c.), that the river T. is a *common river* for all the king's subjects, and that in *locus* there is a *common path* or way for *towing boats*, &c. of all persons going up and down, and because rails were wrongfully erected, and obstructed, &c. pulled them down. 2d, that *locus* is adjoining defendant's close, and both adjoin the river, which overflowed, and a *dam* was erected and washed away, and the closes have ever since been divided by water running from the river, and the ancient way for towing, &c. being thereby impassable, defendants entered *locus*, being a convenient way, and because, &c. *REPLICATION*, new assignment to first plea, and *de injuria*, &c. plea to new assignment.
248. *Replication* to plea to new assignment, protesting no such way.

Right of Way PRIVATE—By GRANT.

139. Plea (to declaration for entering close, &c. p. 138.) right of way private, by grant and assignment, and common of pasture.

VOL. IX.

H h

Right

INDEX TO LEADING TITLES OR HEADS

2. 3. Right of Way Private---By Prescription

Vol.

IX.

Page

- 240. Plea (to trespass for breaking and entering close, destroying fences, throwing down gates, &c. p. 240.). First,
- 241. General Issue. Second, right of way through *locus* as *vicar* of E. from the highway to his freehold close, prescription for way on foot and on horseback, &c. and because way was obstructed, pulled down gates.
- 243. *Replication, novo assignment*, that plaintiff brought his action not only for trespasses confessed, but also for breaking close, treading down corn, &c. otherwise than in using way, and as to trespasses confessed *de injuria*, &c. traverse of right of way. REJOINDER, *non cul.* to new assignment. Issue on traverse.
- 244. Plea, right of way by prescription, and because hedges obstructed, &c. pulled them down. See other pleas, p. 250. REPLICATION. Rejoinder.
- 246. Plea, first, Not guilty. Second, defendant seized of a house near *locus*, prescription to draw *water* out of a well, and a *way* to the well over *locus*; that in fetching the water he unavoidably, &c. several pleas, licence, *liberum tenementum*, giving colour, accord and satisfaction, enfeoffment. *Vide* the pleas, and under their respective heads.

4. Right of Way Private—Of NECESSITY.

- 163. Plea (to trespass for entering close, &c. p. 160.). First, Not guilty. Second, justification in right of a private way by necessity, that one W. M. was seized of two closes, and aliened one to defendant, and that defendant *of necessity* passed through plaintiff's close to his own. Third plea, that there was no other way.
- 165. REPLICATION to second plea, traversing that at the time of the alienation there was no other way as in that that plea is mentioned. And to the third plea, *de injuria*, &c. Also traversing that there was no other way to third plea, *de injuria*, &c. REJOINDER, that defendant *of necessity* ought to have a convenient way after such alienation taking issue on the traverse tendered in the replication to the third plea.
- 168. Plea (to trespass for entering close, consuming turnips, and with carriages subverting foil), that A. B. was seized in fee of a piece of land which he demised to the defendant, in right of which he was entitled to a *way* over *locus*, and because the plaintiff had ploughed up the usual way he *assigned another*, whereupon the defendant entered the last-mentioned way with horses and carriages, and in so doing, did unavoidably, &c. Plea of right of common of pasture in premises in a large common field, excepting the Hitching, and a cul-

VOL.
I X.
Page

PRECEDENTS IN
BOOKS OF PRACTICE,
REPORTERS, &c.

tom to put in cattle levant and couchant from the time the corn is carried off till re-sown in those premises, the land to lie fallow every fourth year; that land did not lie fallow, wherefore, &c. 6th Plea, like custom in part of the said common field called the Hitching. 7th, In other premises, making a part of another large common field, with other very special pleas. Replication to 2d plea of new assignment, traverses common of pasture and custom as set out. To third plea, traverse of custom, &c.; and to 2d plea, protesting no such way as in second plea pleaded, traverses assignment of another way. To 3d plea, protesting no such right of way in the Two Long Acres, traverses alignment of another way. To 4th plea, *de injuria*, &c. and issue. To 5th plea, protesting no such custom (as set out) in common field called Dean Field, traverses common of pasture in West Field. To 6th plea, protesting no such custom in lands lying dispersedly in the large common field, and defendants *de injuria*, &c. traverse custom. To 7th plea, *de injuria*, and traverse custom. NEW ASSIGNMENT to all the pleas, till exhibited not only for trespasses attempted to be justified, but for other trespasses at other times, &c. Rejoinder and issue to first seven pleas. To 9th plea, first plea to new assignment. Replication to plea to new assignment.

408.

Plea in trespass, *non cul. to vi. et armis*; and prescription for a cart and horse way through plaintiff's close,

2. R. P. C. B. 49

Plea, as to part, *non cul.*; to residue, that locus, &c. was parcel of common meadow; that E. R. long before, &c. seized in fee of locus, &c. and of another parcel of ground in the same meadow, to which he had no way but over the locus, &c.; that E. R. devised the said other parcel of ground to defendant, who therefore justifies in using his way to the same, doing as little damage to the same as he could. Replication, *de injuria*, &c.

Ibid. 424

Plea (to trespass for breaking and entering plaintiff's close), justification in right of a public high way leading from another highway from A. to B. in, through, over, and along the locus, &c. to a certain other highway leading from C. to D.

1. H. Bl 351

Plea (to trespass for breaking down and carrying away an iron gate), a demise of certain premises, and a right of way thereto, and that because gate was wrongfully erected across, &c. defendant broke it down, and carried the same to a convenient distance for the use of plaintiff. Replication, protesting that same was not removed to a convenient distance; alleged that after breaking it down they converted the same to their own use. Rejoinder, and issue,

4. T. R 364

INDEX TO LEADING TITLES OR HEADS

BY GRANT—PRESCRIPTION—CUSTOM.

PRECEDENTS in
BOOKS of PRACTICE,
REPORTERS, &c.

Plea (to trespass for breaking and entering plaintiff's close *being part of a bank* adjoining the river Ouze), that the river hath been immemorially a *common highway*, and navigable; that the close in which, &c. hath been immemorially *part of the bank*; that defendant passed up and down, and drew and towed his boats,

3. T. R. 353

Plea (to trespass for breaking, &c. close), that before and at the time when, &c. there was a *public highway* leading, &c. Demurrer and joinder,

Ibid. 265

Plea of justification of a *way* through the way in the declaration. REPLICATION, confesses the way, but that defendant went *beyond* the close to which he prescribed to have a way. Rejoinder, alledges no new matter, but relies on the matter before, &c. Demurrer and joinder,

1. Ld. Raym. 75

Plea (to trespass for breaking close, digging ditches, &c.), prescribes in a right of way for self and servants over plaintiff's closes to defendant's closes; and to the digging *licence* from plaintiff. Replication, *de injuria*, &c.; traverses the prescription, and takes issue on the licence. Rejoinder, issue on the traverse. Verdict for plaintiff on all issues,

2. Lill. Ent. 425

Plea (to trespass for breaking closes, digging and taking away coals, &c.), that the place where is a *common highway* for all subjects, &c. as well horse as foot, at all times with carts to pass. Replication, *de injuria*, &c.

Ibid. 438

Plea, justification of right of way of *necessity*, defendant's closes lying contiguous and *beyond* plaintiff's, to go through plaintiff's closes with horses, carts, &c. to the meadow,

Ibid. 452

Plea (to trespass for breaking and entering plaintiff's closes with cattle and carriages, and carrying away wood and iron, and for digging pits for posts, for making waggon way for coals in two directions through plaintiff's close, one in a direct line north and south, the other transversely, northwesterly, and for pulling down and destroying posts and rails where the transverse waggon passed, 1st. General issue, *non cul.* 2d. As to all the trespasses in the first Count, except the transverse waggon way, one H. S. being seised by indenture between him and defendant's grandfather, granted to him, his heirs and assigns, a *convenient way*, and *licence*, with cattle and carriages, &c. on foot and on horseback, for himself and servants, &c. over *locus*, &c. to lead and carry coals; and being seised of the way in gross it descended to defendant, who for the more convenient, &c. dug, &c. and fixed posts, &c. and pulled down rails, &c. as obstructing, &c. 3d. Plea similar to 2d. only justifying the fixing a framed waggon *transverse* way, as well as the direct way. *New assignment*, that defendant dug, &c. at other times, &c. and on other occa-

fions than when the same reparation mentioned in the indenture were made necessary, and for other purposes than repairing; and that framed waggon way so affixed at the time of action brought was unreasonable, and not pursuant to the form of the indenture. Similar to 2d plea, only adding that part of one of the framed waggon ways was wholly out of the way by the indenture granted. Special verdict,

i. T. R. 560 to 563

PUBLIC WAY.

That it is a *common foot-way* for all inhabitants in, by, and through the close to the church. *Tbo.* 412. To an ancient messuage. *Ibid.* 414.

That it is a common way from the hamlet of L. over the close unto the *vill* of K. to go and ride, and for cattle, *Tbo.* 344.

That it is a *common way* from the *vill* of E. over the close as far as the common fields, to drive cattle, and for carriages, *Tbo.* 371. 403.

Plea of justification using a *foot-way* over *locus*, &c. which was for all the liege subjects of our lord the king by prescription. Replication, *de injuria*, &c. traversing prescription. Rejoinder, maintaining prescription, and issue, *Bro. Vtd.* 506.

That there was an accustomed *highway* beyond twenty acres of land leading from P. to H. as well for horse as foot, and plaintiff erected two gates at the extremity so that none could pass or ride, *per quod* defendant riding and enjoying the way, broke and threw down the gates. Replication, that plaintiff was seized of twenty acres of land till defendant committed trespass, and traverse prescription, 1. *Bro.* 339.

That beyond, through, and over the close in the *new assignment* there were three *common footways* for all foot passengers, of which the first leads, &c. Replication, protesting that there were not three footways, pleads that defendant went *extra vias*. Rejoinder, maintains plea, and traverses *extra vias*, and issue, 2. *Bro.* 255. Like, for one way, *Ro. Ent.* 458.

That there is a *common footway* from the curtilage to the messuage. Replication, confesses the way, but that defendant broke the close *extra viam*. Rejoinder, *non est*, *Tbo.* 297.

That there is a *common king's highway* from a place called B---gate, over the close in the *new assignment* to a mill, to go, and ride, and for carriages. Like plea at another day. Replication, *de injuria*, and traverses the custom, *Wi. Ent.* 967.

That *locus* is parcel of the king's highway leading from B. to T. for passengers as well on foot as on horseback, which plaintiff stopped up with posts, and defendant pulled them up, *Wi. Ent.* 1004.

That *locus* is a *common highway* leading from town to town through the middle of plaintiff's park, to walk and ride, and defendant rode through the park. Replication, *de injuria*, &c. and traverses that it is a common king's highway through the park, *Ra. 617. Up.* 185. 203.

That *locus* is parcel of the king's highway leading, &c. which plaintiff inclosed with hedges, and defendant, in riding and using the way, broke and carried away. Replication, that *locus* is parcel of land adjoining a wall, and containing, &c. which is plaintiff's freehold, and traverse of its being parcel of the king's highway, *Ra. 617. Vtd. Int.* 122.

INDEX TO LEADING TITLES OR HEADS

That *locus* is a common highway from the highway called H. over the close unto the will; to go and ride, *Upp.* 184.

That *locus* is a common footway, *Moo.* 684.

That *locus* is a common foot path for all persons on foot over the close in which, &c. *Replication*, that defendant was *extra semitam*, *Asb.* 446, *Moo.* 257.

PRIVATE WAY--BY GRANT OR AGREEMENT--(See PRESCRIPTION, *pg. 8.*)

That defendant's father, seised in fee, granted to plaintiff free liberty into the courts and house free and common ways and passages of ingress, egress, and regress; to carry his goods or carriages through the court, and was about to pass by the said way and passage, and because a certain gate was fixed across the way and passage he broke down the gate. *Replication*, that it is not the same trespass of which he complains. Demurrer, and judgment for defendant, 3. *Lev.* 82.

That H. seised of close in *quo*, &c. and of another close called S. demised to defendant's father close called S. and the way, as well on foot as for horses, from the highway through and over the close in *quo*, &c. to the close called S. for ninety-nine years, assignment thereof to defendant, who to use the way threw down the bank, and filled up the ditch. *Replication*, *de injuria*, &c. and traverses the seisin, *2bo.* 314.

That E. seised of the manor whereof messuage and close called W. was parcel. and demiseable by copy, had a way by himself and tenants of the said messuage, from the messuage over the close in the new assignment to the close called W. and back, to go, and for all carriages; E. granted the messuage and close to J. and defendant as his servant went from the messuage over the close to use the way. *Replication*, *de injuria*, &c. traversing prescription, *Hi. Ent.* 977. 1093.

That defendant, seised of a close called D. drove heifer *damage feasant* into plaintiff's close adjoining. *Replication*, that J. seised of manor, had a way for his customary tenants over the said close called D. to a customary tenement, and granted the customary tenements to plaintiff and others for their lives; and that defendant in passing drove the heifer out of the said close called D. into plaintiff's close adjoining. Rejoinder, maintaining plea, and traverses prescription, *Wi. Ent.* 990. Qu. If this be well pleaded, *Her.* 711.

That W. seised of a manor, had a way from the sole of the manor to lands, part of the manor, through a piece of land to drive his cattle, and to carry, &c. and common of pasture in eleven acres of land, and W. demised it to defendant. *Replication*, traversing prescription, *Ra.* 618. *Vit. Int.* 165.

That T. seised of five houses, had a way to go with horses, cattle, and carriages, from his messuage beyond plot of land as far as the highway. T. demised to defendant at will; plaintiff prohibited defendant, who, notwithstanding the prohibition, entered. *Replication*, that there was another way beyond another plot of ground before the building thereon, and after the building defendant had a way by licence and by grant, and traversed prescription, *Ra.* 618.

That W. seised of the adjoining close, had a way from the king's highway through and over plaintiff's close for cattle and carriages; W. demised it to defendant, who threw down the gate erected to stop up the way, and the cattle in passing scratched a mouthful of grass. *Replication*, *de injuria*, &c. traversing prescription, 3. *Br.* 426.

That T. seised of a messuage, had a way over part of the lands in the new assignment as far as the church; T. demised to A. and E. for their lives, E. survived, and married defendant, who used the way, &c. Like replication, 3. *Br.* 441.

Plea to part by prescription in right of way, and to residue *liberum tenementum*.

Replication to first plea, *de injuria*, &c. and to the other plea traversing seisin, *Tho.* 351.

BY PRESCRIPTION.

That defendant, *rector* of church, seised in right of the church, had a way to drive his cattle in, by, and through plaintiff's close, *Tho.* 300.

That M. seised of a close, had a way for himself, &c. and carriages from C. by and through the close in which, &c. to the close of M. and defendant as servant of M. in using the way trod it down, *Tho.* 326.

That E. seised of a messuage had a foot and horseway from his messuage, *per venditum* to the gate leading, &c. and from the gate to close of E. called R. and from said close to and by plaintiff's close, when the field called A. lies fresh, and when the field is sown after corn carried off till resown and from plaintiff's close to one acre of defendant's, and thence back. Replication, *de injuria*, &c. traversing prescription, and issue, *Tho.* 382.

That N. seised of manor, had a way for himself and customary tenants, from the manor over the place to the sea shore, throughout the year, to go, carry, and recarry, and defendant was customary tenant, who entered the close to use the way, 1. *Bro.* 339.

That defendant, seised of a piece of meadow, had a way from the piece of meadow over a piece of meadow called F. G. and a piece of plaintiff's meadow in the new assignment, as far as, &c. every year after cutting the grass growing in defendant's piece as far as the spring, to drive the cattle there and back. Replication, *de injuria*, &c. and traversing prescription, 1. *Bro.* 347.

That defendant, seised of messuage and close called, &c. had a foot and horseway to drive cattle on the said messuages levant from the said messuage in, by, and through that close to defendant's close and back throughout the year, 2. *Bro.* 284. Replication, *de injuria*, &c. and traverse of prescription, *Tho.* 405. 416.

That defendant, seised of houses and close adjoining, had a way from his messuage and close in, by, and over plaintiff's close to drive his cattle, and for carriages. T. demised to defendant, who with cattle entered to use the way and in their own right, and L. as their servant, threw down posts erected to obstruct the way, and the cattle in passing snatched a mouthful of grass. Replication, *de injuria*, &c. traversing prescription, and issue. *Tho.* 298. *Bro. R.* 502. Like replication, *Tho.* 416.,

Plea of prescription for a way to several trespasses, 2. *Lut.* 1426.

Plea (to breaking closes at W. H.), that he is a parishioner and inhabitant of B. W. and that they from time whereof, &c. have had a way from B. W. to a vill called B. and from B. in and through the closes in which, &c. as far as to W. L. aforesaid; issue on the prescription, and found for defendant, and judgment, though it was objected in arrest of judgment that the prescription was impossible, 2. *Lut.* 1506.

Plea (to breaking close), of ingress, &c. to repair a wear appurtenant to a mill. Replication that defendant had extended the wear beyond its usual place, 2. *Lut.* 1515.

Plea (to Count for breaking a close called the fold), that one N. B. was seised in fee of a messuage, &c. and that he had a way by prescription from the common way in B. through the plaintiff's close to the fold of the said N. B. near and next adjoining his said own messuage, and that he demised to D. for twenty-one years from the day of the date of the said indenture, and the defendant justifies as servant to said D. Demurrer, and judgment for plaintiff on an exception that it was not alledged in what vill or fold, and no indenture was before alledged, 2. *Lut.* 1526.

INDEX TO LEADING TITLES OR HEADS

- Plea of justification using a foot way over *locus*, &c. which was for all the liege subjects of our lord the king by prescription. Replication, *de injuria*, &c. and traverse: prescription. Rejoinder, maintaining the prescription, and issue, *Bro. Vad.* 506.**
- That defendant as servant of S. A. and by his command justifies breaking posts and rails erected by plaintiff in the way claimed by his master by prescription. Replication, *de injuria*, &c. traversing prescription. Rejoinder, and issue on the prescription, *Bro. Vad.* 510.**
- That P. seised of a close called Five Acres, had a *footway* from the highway over the closes in which, &c. unto the close called Seven Acres. Replication, *de injuria*, &c. and traverse, *Tho.* 390.**
- That W. seised of messuages and lands, and of a close called N. (where the piece of land called H. and the close in the *new assignment* should not be sown) had a *foot and horseway* for cattle and carriages from his lands over the land called H. and from H. over the close in the *new assignment*, and from thence to his own close called N. and so back again, throughout the year; W. demised to J. for years, and defendant as his servant went with a cart, and finding the way stopped up with hedges and ditches inclosing it, dug up the ground, and filled up the ditch with earth and pulled up the hedges to use the way. Replication, *de injuria*, &c. traversing prescription, *W. Ent.* 964.**
- That defendant, seised of a messuage and close called N. had a way for himself and carriages from the highway in C. through plaintiff's yard and the *locum* in the new assignment to the close called N. and back. Replication, maintains declaration, and traverses prescription, *W. Ent.* 974.**
- That defendant, seised of a mill, had, *per limitem*, by farmers and suitors to the mill, a *common way* as well to as from the mill over the plaintiff's close as far as to the *will* of B. for all carriages, and so back. Replication, that R. seised of the close, demised to plaintiff, &c. traversing prescription, and issue, *W. Ent.* 1011.**
- That defendant, seised of the house, had a *foot and horseway* from the messuage to the church of E. and market of M. with all carriages over the close. Replication, *de injuria*, &c. traversing prescription, *Ra.* 617. *Vet. Int.* 21.**
- That the places in which, &c. are three fields, and the bishop, seised of two manors, had three *several ways* through the *several fields* for carriages, and to drive cattle, and plaintiff made ditches in fields, and planted five trees in them, which the bishop and his servants cut to use the way. Replication, *de injuria*, &c. traversing that bishop had the said ways, *Ra.* 617. *Vet. Int.* 189.**
- That defendant, seised of one acre of land in the field, had a way from the king's highway in the town through the *common* to the said acre of land to direct, to drive, &c. and to carry, &c. Replication, that *locus*, &c. is several soil, and traverses the prescription, *Ra.* 618. *Vet. Int.* 101.**
- That defendant, seised of a messuage, had a way through the lands to the church. Replication, protesting that he had no way, pleads that plaintiff was seised of the close until the trespass committed in the close, *extra viam non est.* *Upp.* 186.**
- That J. seised of a messuage, had a way from the same over *locum*, &c. to the king's highway, and defendant as his servant using the way trod down the barley sown in the way. Like replication, 3 *Br.* 451.**
- That J. seised of manor, had a way from the selte to forty acres of land in the field, parcel of the manor, for driving cattle and carriages beyond a parcel of land; and *common* of pasture in eleven acres of land for all cattle levant in the manor for fourteen days before and after the feast day. J. demised to defendant, who used the way and common, and traverses that he is guilty in the said eleven acres after fourteen days after the festival, or before the fourteen days before the festival. Replication, that the piece of land in the several soil, and traverses prescription for a way, and issue; and that said eleven acres of land are severally, and**

IN THE CIVIL DIVISION.

and traverses prescription of common, and issue; and that defendant is guilty after fourteen days after the festival, and before the fourteen days before the festival, *Ra. Ent. 618. Vet. Int. 165.*

Plea to part, that all the inhabitants in the *vill* had a common way in, through, and over the plaintiff's closes; and to residue, that plaintiff ought to repair the hedges, *Ibo. 402.*

BY CUSTOM.

Plea (to trespass for breaking close, &c.), that within the said close from time whereof, &c. there had been a gravel pit in which the inhabitants of the parish have used to dig gravel, &c. for the repair of the *other highways, &c.* and after the necessary averments justifies. Demurrer, *2. Lut. 1344.*

That parishioners of T. used annually upon rogation-day to go over and through the close in the new assignment in going round upon the bounds of the parish (called processioning); and because plaintiff stopped up the way with hedges and gates, defendant prostrating them in using the way; and traverse that they were guilty before or after that day. Demurrer, *1. Bro. 349.*

That every customary tenant of the manor of T. had a way as well on foot as for horses from the highway through and over the close in the *new assignment*, for carriages, and to drive cattle to S. and thence back; R. was customary tenant of the manor of messuages and lands, and plaintiff shut up the way by erecting a gate, which defendant as servant of R. threw down to enjoy the way, and cattle passing snatched a morsel of grass. *Replication, de injuria, &c.* and traverses custom. Issue thereon, *2. Bro. 248.*

OF NECESSITY.

Plea (to declaration for breaking close, prostrating, despoiling, and carrying away forty perches of hedges) to part, *non cal*; to residue, justification under a *right of way*, where there had been an *unity of possession* and alienation of part of the lands. Demurrer, but judgment for defendant, because the way was of *necessity*. *2. Lut. 1487.*

That G. leased of the rectory, demised it to defendant, and C. sowed lands adjoining plaintiff's close, and let apart sheaves of corn for *tithes*, and defendant to carry them off the usual way (without alleging any prescription), removed the bars, and entered into plaintiff's close, and through and over that close into the lands sown, to carry off the tithes, and the cattle passing snatched a mouthful of grass; and averment *that there is no other way*. *Replication, de injuria, &c.* *Wi. Ent. 589. Her. 709.*

That P. leased of a messuage, close of land, and warren, granted house and close to defendant by indenture, together with all ways, &c. and at the time of the execution of the indenture a *way* from the messuage to the close was absolutely *necessary* through the warren, and defendant to use the way threw down the hedge and ditch. Plaintiff praysoyer of the *indenture*, and demurrer, *Her. 729.*

INDEX TO LEADING TITLES OR HEADS

7: EASEMENTS, &c. NOT CLASSED. (12)

(See Distresses, Damage Feasant.)

Vol.

IX.

Page

182. Plea (to trespass for placing timbers on plaintiff's land, &c.), that A. B. possessed of a house adjoining to the walls, had a right to place the timber as an easement to his house. (See p. 181. 183.)

184. Plea (to trespass for entering close, pulling down hedges), that defendant had a prescriptive privilege to *water her/tes*, and because the way was obstructed removed the hedges. (See the Plea.)

188. Plea (to declaration for entering close, carrying away water, &c.), defendant had a privilege to go to the pump for water as an easement, and therefore took the care of the pump, as he lawfully might do; and licence.

191. Replication (to plea of damage feasant to declaration for chasing lambs), M. L. seised of two closes prescribes for the benefit of *washing their sheep in a rivulet* near locus, and *afterwards driving sheep into locus to dry*; and M. L. demitted to plaintiff.

PRECEDENTS in
BOOKS of PRACTICE,
REPORTERS, &c.

Plea to force, &c. *non cul*; and to entering the close, and digging, and carrying away the sand; defendants prescribe as servants to J. B. to get sand in the locus, &c. for the use of his messuage and garden. Replication, *de injuria*, &c. *absque tali causa*, traversing prescription. Rejoinder, issue on the traverse.

493

Plead. Ass.

FAIRS AND MARKETS. (See DISTRESSES FOR TOLLS, &c.)

Plea to trespass for prostrating a stall and erecting another, that E. seised of the manor whereof the *vill* and close *in quo*, &c. are parcel, and that in the *vill* and close there was annually held a fair, E. demitted to defendant the profits of the fair, who in the time of the fair threw down plaintiff's stall, and erected another for the use of the fair. Replication that the close is plaintiff's freehold, and defendant *de injuria*, &c.; traverses that close is parcel of the manor, 3. Br. 415.

EASEMENTS NOT CLASSED, &c. (See RIGHT OF COMMON TO ESTOVERS, &c. AND LICENCE TO CUT WOOD.)

That defendant was seised of copyhold lands held of plaintiff lord of the manor, and that within the manor there was a custom that copyholders in fee might cut wood,

wood, underwood, and trees growing on customary tenements at will. Replication, confesses part of the plea, and traverses the custom, 2. Bro. 250.

That M. possessed of a close called S. and a close called P. adjoining, demised close called S. to plaintiff, with liberty of cutting and making hedges between closes, and ingress, egress, and regress in and through the plaintiff's close to carry wood thence arising excepted, and defendant as servant of M. entered into the close, and hedges between the closes cut and made, and the wood therefrom arising carried away, *Wi. Ent.* 996.

Plea (to breaking close and cutting trees), that L. seised of a close upon which the trees grew, and they hung so much over part of plaintiff's close in the new assignment, that they could not be cut, unless by entering plaintiff's close, on which defendants as servants of L. entered into the close and cut the trees, doing as little damage as they could. Replication, *de injuria*, &c. and traverse that trees grew upon the close of L. and issue, *Bro. Met.* 378.

That plaintiff sold trees to defendant for ten pounds in hand paid, and defendant entered into the close and cut them. Replication, that he sold the trees for ten pounds to be paid at a feast day, on condition if not paid to be void, and defendant did not pay, and traverse that he sold for ten pounds in hand paid, *Ra. 6-5. Vet. Int.* 156. Replication, *de injuria*, &c. and traverses the sale, *Ra.* 675.

Plea (to cutting down wood), to part, that R. seised of the wood, sold the timber to defendant; and to the residue, that N. seised of the wood, enfeoffed R. to the use of H. who devised that the wood and underwood should be sold by M. his wife and B. his executor, who sold to defendant. Replication to both pleas, that H. devised the lands to his wife for life, remainder to the son, who sold the trees to plaintiff, and defendant at the time of the purchase had notice of the use, and traverses that H. devised that lands should be sold by executors, and traverse that M. one executor sold to defendant. Rejoinder, that the trees were sold by R. and both the executors agreed to the sale; and to the other plea, demurrer; and demurrer to rejoinder, *Ra.* 776.

That locus where trees grew were fifty acres of wood, whereof abbot being seised cut trees, and permitted them to lay there, and defendant as his servant carried them away. Replication, that plaintiff and his wife were seised of the manor, whereof the ditch lying between plaintiff's lands and those of the abbot, and the banks, and mounds or motes (*fossata*) of the ditch were without the bay (*basium*) of the abbot are parcel, and the trees there grew, which plaintiff cut, and defendant carried away. Rejoinder, that the ditches, banks, and mounds or motes are the freehold of the abbot, and traverse that they are parcel of the manor, *Ra.* 649. *Vet. Int.* 162.

That defendant, (*minetarius*) coiner of the king cut trees to make the coin (*minetam*), &c. by prescription. Replication, that defendant cut more than was necessary, and sold them, 2. *Inst.* 578.

no right to dig wood. 3 Inst 386.

EASEMENTS NOT CLASSED. (See CUSTOMS.)

That occupier of lands in the said field in ploughing land was accustomed to turn the plough and affros, drawing it upon the land of any person adjoining, to bring back the plough and affros to his own land. Replication, confesses the custom, but further says that defendant committed the trespass otherwise than in turning the plough and affros, as plaintiff declared, *Tho.* 388. *Bro. Vad.* 441.

That the land was four acres of waste not inclosed, and a custom for all tinner within the county of C. to make trenches to convey watercourse to the tin work in all the commons, moors, and wastes not inclosed or severed for washing and cleansing the tin, 1. *Bro.* 339.

INDEX TO LEADING TITLES OR HEADS

Plea to trespass by a corporation for breaking a piece of land and digging in the soil, and to carry it away; that within the borough there are divers of inhabitants and free men, who were owners and masters of ships, and that *locus*, &c. is within the port, and ased to take and dig ballast, 3. *Lev.* 157. Replication, that *locus* is parcel of the manor of Lynn Regis, and P. and B. being seised by letters patent, granted the mayor aforesaid to the mayor and burgessees that they might permit divers free men of the borough aforesaid to dig necessary ballast for the shipping in the said port. Demurrer, and *custom* held good, 1. *Bro.* 158.

Plea (to trespass for breaking his close, &c. and digging soil there, and taking and carrying away a cart load of lead), not guilty to taking, &c. to part of the lead; and to residue of trespass plea, that the place, &c. is a place within the hundred of N. called the King's Fee or Field, and parcel of it; that in the said place called, &c. was a custom that *bene alicui persone*, being a subject, &c. without saying (*bene licuit*) to dig for lead in the said place called, &c. and to carry and retain the residue after the duties accustomed are paid to the church, &c. excepting for which, &c. and justify. Demurrer, and judgment for plaintiff, 2. *Lut.* 1317.

Plea (to breaking the close, and among other things prostrating twenty perches of hedges), that one A. G., was seised in fee of the manor of D. and that he, &c. from time whereof, *used to dig* in a close within the *vill* of S. for coals, &c. except gardens which belonged to the manor. Replication, *de prout*, &c. Demurrer, and judgment for plaintiff, 2. *Lut.* 1317.

Plea, that the close, &c. was a great moor or common waste, in divers parts of which were divers quarries and great rocks lying there, and that defendant was seised of a messuage, &c. and that he, &c. *have used to dig*, take, and carry away, and have for their use recks out of the said quarries for *repairs*, and justify taking a great rock, averring that it was necessary. Demurrer, and judgment for plaintiff, for that it was said that the rocks were used for repairs, or at least to keep to repair, 2. *Lut.* 1388.

Pleas.—Justification of Trespasses

8. By DEFECT OF FENCES, and Inclosures. (13)

(See Right of Common, *ante*.—Not Repairing, &c.)

PRECEDENTS in
BOOKS of PRACTICE,
REPORTERS &c.

Replication to plea of damage feasant, that plaintiff possessed of a close adjoining to a road near to defendant's close, and that the hedges of defendant's close which he ought to keep in repair, were not in repair; and that as plaintiff was driving his pigs into his own field some of them escaped through the *insufficiency of the hedges* into the defendant's close. Rejoinder, protesting that defendant ought to repair, for rejoinder defendant says fences were in good repair, and that the pigs for want of being yoked got through the hedges. Surrejoinder, protesting that the hedges were not in good repair, and that the pigs got in through defect of fences. Two issues.

(See

(See Declaration, p. 56. and plea distresses damage
tenant, *post*.)

Plea (to declaration for impounding cattle, and continuing them impounded till some person let them out, whereby they were lost). That the cattle were doing damage, wherefore he seized and impounded them. Replication, that defendant's *hedges were out of repair*, by which means the cattle escaped into defendant's closes. Rejoinder, admitting that defendant ought to repair, but that plaintiff of his own wrong set fire to defendant's hedges, and thereby made breaches in them, whereby the cattle escaped into defendant's closes. Surrejoinder, that defendant committed the trespass of their own wrong, and traverse that plaintiff set fire to the hedges. Rebutter, taking issue on the traverse.

Mor. Pr. 613. 678

Ibid. 648

Ibid. 648

Ibid. 643

That defendant is in possession of a close contiguous and adjoining the close in *quo*, &c. and plaintiff is seized of close in *quo*, &c. and that plaintiff ought to make hedges in the said close; and defendant put his cattle into the close in his possession, and they through *defect of fences* between the said closes, entered into defendant's close. Replication, *de injuria*, &c. and issue, 1. Bro. 340. Ro. Ent. 465. *Wi. Ent.* 996. *Tbo.* 304. 308. 342. 361. Replication, with like traverse, *Wi. Ent.* 999. *Han.* 213.

That defendant, seized of a close adjoining to plaintiff's close, and of one (*vivarica dica*) park hedge which divided plaintiff's and defendant's close; plaintiff cut and threw down part of the hedge, per quod defendant's cattle escaped into plaintiff's ground. Demurrer, 1. Bro. 354.

That close in *quo* adjoins the highway, and that plaintiff ought to make the hedges between the close and the highway, and because the hedges were broken down defendant's cattle escaped out of the way. Replication, *de injuria*, &c. and traverse that hedges were broken, and issue, *Tbo.* 296.

That defendant is possessed of a close called H. adjoining the closes in which, &c. and plaintiff occupied the closes, and the occupiers of the closes ought to make the hedges in and upon the closes, and repair the hedges of defendant's close called H. that the cattle should not escape into the said closes in which, &c.; and the occupiers of the close of H. were obliged to bring back the cattle that had escaped through *defect of fences* from the same closes into the close of H. Defendant put his cattle into the close of H. that escaped through defect of fences, *Tbo.* 391.

That the close in which was parcel of the common field, and inclosed by the plaintiff from the residue of the field, and plaintiff and other occupiers were used to repair the hedges; defendant, seized of the customary houses and lands, had common in the common field for all sheep throughout the year; that he put in sheep; and because hedges were out of repair they escaped into the close, *Tbo.* 332. *Mo. Int.* 387. Replication, *de injuria*, &c.

That plaintiff ought to inclose his field next adjoining the common way, through defect of which defendant's cattle in passing strayed into plaintiff's close, *Tbo.* 397. Replication, to like plea, *de injuria*, &c. and traverses that cattle entered through defect of inclosure, and issue, Ro. Ent. 459.

Plea, adjoining close in *quo* defendant had common for all cattle throughout the year, and through defect of fences plaintiff's cattle escaped, *Wi. Ent.* 995. Like, after corn carried off until the field sown, Bro. R. 503. Like plea. Replication, protesting that defendant had not common, pleads *de injuria*, and traverses that hedges were broken, and issue, *Wi. Ent.* 1006.

Judgment

INDEX TO LEADING TITLES OR HEADS

judgment by default as to part of the trespass against *one* defendant, to residue they plead, that plaintiff, seised in fee of the closes, that the close called the B. adjoins to a common field in S. and F. called the Common; that plaintiff, from time whereof, &c. *baile repaired the fences*; that defendant H. was seised in fee of the manor of S. and that he, &c. from time whereof, &c. have had *common of pasture* in the said field, &c. and put the cattle in the declaration in the said field, and they escaped into the closes in the said declaration mentioned, *through defect of inclosure*, for which they entered and chased them out. Replication, *de injuria*, &c. traverses the escape *modo et forma*. Demurrer to the replication, and the plea held bad, 2. *Lut.* 1357.

That plaintiff is seised of the close and defendant of adjoining close, and *defendant ought to make hedges* between the closes, and defendant made sufficient hedges, which plaintiff pulled down, and cattle entered. Replication, *de injuria*, &c. *Ra.* 620.

That *loci in quibus*, &c. are three closes called N. W. and F. and that T. seised of the close called E. adjoining to said three closes of plaintiff, and that *plaintiff ought to set up fences* between the said close called N. and the said close called E.; T. demised to defendant for years. Replication, that the said three closes were well fenced, and the defendant's cattle so strong (*fortia*) that they broke the hedges, and that *said T. ought to make another fence* of twenty-four perches between the close called F. and close called E. and that the same twenty four perches were out of repair, *per quod* the cattle entered through the same into the said closes called F. and W. Rejoinder, that the close called M. was not well ditched, and issue; and that the said twenty-four perches were in good repair, and issue, *Ra.* 621.

That prior was seised of the manor whereof one hundred acres of land are parcel adjoining to plaintiff's close whereof *heir*, &c. is parcel, and that plaintiff was used to inclose the said close against the said one hundred acres, and defendant by command of the prior put the cattle into the said one hundred acres they entered into the close for *want of fences*. Replication, *de injuria*, &c. travelling prescription to inclose, *Ra.* 621. *Vet. Int.* 122.

That defendant, seised of three closes, &c. adjoining close in *quo*, &c. and between them, plaintiff ought to make fence *through want* of which defendant's cattle entered, &c. Replication, *Ra.* 621. *Upp.* 101.

That defendant is seised in a close and plaintiff of another close adjoining; between the closes there is a hedge which defendant ought to repair, and that the hedge was out of repair, *per quod* the cattle entered. Replication, *Ra.* 621. *Upp.* 194.

That plaintiff was seised of the close in which, &c. and that the abbot was seised of the close adjoining, which he demised to defendant, and that there is a hedge between the closes whereof plaintiff ought to repair six perches near the lands of W. and three perches near the lands of D. and defendant's lands; and the said six perches and three perches were out of repair, *per quod* the cattle entered plaintiff's close divers times, and defendant pursued them immediately each time, and drove them out again. Replication, that plaintiff was not used to repair said six perches, *Ra.* 622.

That defendant, seised of a close, and one W. seised of an adjoining close, between which W. ought to make fences; and that plaintiff, seised of close adjoining close aforesaid, W. ought to make hedges between the closes, and that defendant's cattle through defect of W. fences entered into said close of W. and through *defect of plaintiff's fences* into his close. Replication, that plaintiff's hedges were in good repair until defendant's cattle, being wild and ungovernable, broke them, and traverse that the hedges were broken, 3. *Br.* 469.

As to *new assignment* that J. seised of the manor, granted copyhold lands in fee, and that the copyholders had *common* in *venella* adjoining to the close in the new assignment,

signment, and that plaintiff, seised of the same close, ought to *make hedges, &c.* Replication, that cattle, being wild, &c. broke the hedges, *Her. 707.*

Plea to trespass in close called P. in the *new assignment*, that defendant was seised of close adjoining for life, and that plaintiff and all other occupiers of the said close called P. were used to repair the fences between the closes, &c.; and as to the trespass in the close called K. in the new assignment, that defendant, seised of the houses and lands, had *common of pasture* in a piece of pasture called T. adjoining for all cattle throughout the year, and that plaintiff and all other occupiers were used to *repair the hedges, through defect* of which cattle escaped, &c. *Her. 721.*

Plea, that plaintiff, seised as well of the close in *quo*, &c. as of another close called P. adjoining the said close and highway, and ought to make the hedges of the said close called P. to the highway, and the defendant's cattle driven to the highway strayed into the said close called P. and from thence to the close in *quo*, and defendant to get them out followed them into the said closes. Replication, *de injuria*, &c. traverses that the hedges were out of repair, *Her. 728.*

That defendant is seised of a close adjoining plaintiff's close, and divided only by a rivulet, which by prescription was the division or *fence* between them; and that defendant's cattle swam across the river, and he chased them out. Replication, that plaintiff was seised of the close until defendant *de injuria*, &c. made the trespass, and traverses that the river is a fence between their closes, *Ass. 439.*

Plea, not guilty to part; defendant as customary tenant had common in the land adjoining plaintiff's close, and to enjoy his common, and defendant's cattle entered into plaintiff's close out of the common *through defect of fences* which plaintiff ought to repair; to residue licence, *120. 39.*

10. Plea, Distresses, &c. for

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|-----------------------------------|--------|
| 1. Damage Feasant. | } (14) |
| 2. Rents, Services, Fines, Tolls, | |
| Fines, Amerciaments. | |

(See Right of Common, *ante.*)

1. Damage Feasant.

BY COMMONER—OCCUPIER.

VOL.

IX.

Page

56. Plea (to declaration for taking and impounding plaintiff's pigs). 1st, Not guilty. 2d, That plaintiff possessed of a close, and that pigs were therein eating up the grass, doing damage, wherefore defendants seized them as a distress. Replication, that plaintiff is possessed of a close adjoining to a road near to defendant's close, which he ought to keep in repair, were not in repair; and that as plaintiff was driving his pigs into his own field some of them escaped *through the badness of the hedges* into defendant's close.
58. Rejoinder, protesting that defendant ought to repair; for rejoinder says, the fences were in good repair, and that the pigs for want of being yoked got

through

INDEX TO LEADING TITLES OR HEADS

276. through the hedges. Surrejoinder, protesting that the hedges were not in good repair, and that pigs got in through *defect of fences*, and two issues.
 277. Plea, 1st, General issue. 2d, That plaintiff took the cattle damage feasant, and impounded them as a distress for the damage. Other pleas. *Vide* Replication to 2d plea, that whilst cattle remained impounded defendant led them away without plaintiff's consent. Rejoinder, that the cattle were released by plaintiff's consent, and traverse that they were released without his consent.
 278. Plea (to declaration for entering closes, and with depasturing grafs, pulling down hedges, &c.), that the cattle entered the closes *against the will of the defendant*, and that plaintiff took and impounded them.
 279. Replication, that the cattle escaped out of the pound, and plaintiff unsatisfied. Rejoinder, issue on the escaping.
 280. Replication (to plea of damage feasant to declaration for chasing lambs), that M. L. seized of two closes, demised to plaintiff, and *prescribes* for the benefit of *washing sheep* in a rivulet near *locus*, and afterwards *driving sheep into locus to dry*.

2. Rents, Services, Tolls, Fines, Amerciaments.

270. Plea (to declaration for breaking and entering dwelling-house, making a noise, seizing and taking goods. 1st, General issue. 2d, Plaintiff was at a court of view of frankpledge appointed constable, and upon his refusal to be sworn he was amerced, which amerciament was *affected* and unpaid; defendant took the goods, &c. in declaration mentioned as a distress for said amerciament. Replication, protesting insufficiency, *de injuria sua propria*, and traverses plaintiff's refusal to be sworn. Rejoinder, issue on traverse.
 271. Plea, 1st, Not guilty. 2d, That lady Windsor, seized in fee of a lordship, and C. B. deceased, seized of messuage, &c. within the lordship, and held at rent of two shillings and elevenpence, and a *heriot*, and distrained best beast for heriot unpaid. Several pleas. *Vide* Replication, when tenant died out of the lordship, and not possessed of any beast within the lordship, five shillings were paid in lieu; traverses tenure and custom. Other replications.
 282. Plea to distress for an amerciament at the court leet of the city of Carlisle, on presentment for a nuisance, suffering swine to run about the streets. Replication, *de injuria*, &c. *absque tali causa*.
 283. Plea (to declaration for entering house, seizing goods, and detaining till two hundred pound paid), that

plaintiff, being *seized* by the commissioners of excise, and not paying the same, distrained his goods by defendant as his servant. (Proceedings and judgment before commissioners set out.)

296. Plea (to declaration for *distraining*, &c. cattle), that plaintiff was driving cattle over the bridge, and ought to have paid *toll*; that body corporate of the city of Gloucester ought to repair, and therefore entitled to toll.

297. Plea of justification to entering dwelling-house and taking goods as *distress for rent* within thirty days after they had been fraudulently removed.

Plea (to trespass for stopping plaintiff's waggon, and seizing and taking from the cattle drawing the same a pair of iron geers), prescription for *toll* through the streets of Gainsborough, in consideration of repairing divers streets there, and to distrain for the same. Replication, *de injuria*, &c. and traverse the prescription. Verdict for defendant. "Prescription adjudged ill in arrest of judgment, because he doth not say *that he repaired all the streets* there, and the plaintiff might be passing with his waggon through a street which he did not repair."

1. Will. 295. b.

Plea (to trespass for impounding the plaintiff's mare), *damage feasant to the king* in his forest of Waltham. Replication, shews *right of common* in locus, &c. Rejoinder, that the mare was mangy, and doing damage, and therefore they took and impounded, because she was wrongfully and unlawfully in the forest. Surrejoinder, traverses the mare to be wrongfully, &c. in the forest. Issue on the traverse. Demurrer and joinder; adjudged rejoinder to be departure from the plea.

Ibid. 96. b.

Plea (to trespass for taking, drawing, and carrying away plaintiff's hog), *non cul.* and issue. 2d Plea, that defendants took, &c. *damage feasant*. Replication to 2d, that after taking and impounding defendant converted to his own use. Demurrer and joinder.

2. Will. 20

Plea, (to declaration for impounding cattle and continuing them impounded till some person let them out, whereby they were lost), that the cattle were *doing damage*, wherefore he seized and impounded them. Replication, that defendant's hedges were out of repair, by which means the cattle escaped into defendant's close. Rejoinder, admitting that defendant ought to repair; but that plaintiff of his own wrong set fire to defendant's hedges, and thereby made breaches in them, whereby the cattle escaped into the defendant's close. Surrejoinder, that defendants committed the trespass of their own wrong, and traverse that plaintiff set fire to the hedges. Rebutter, taking issue on the traverse.

Mor. Pr. 637 638 to 648

Plea (to declaration for seizing cattle), that defendant seized the cattle for non-payment of *toll* of one penny for passing over Bedford-bridge. 2d, As *estrays*. Replication,

- that the honor of Leiceſter is an ancient honor, and that the inhabitants thereof are quit and exempt from the payment of toll throughout the realm, and that plaintiff is an inhabitant of that honor, and that the cattle were his own; and that defendant had notice, yet defendant of his own wrong took ſaid cattle, &c. 2d, *de injuria*, &c. and that the cattle came as eſtrays. Rejoinder, that the plaintiff is not a burgeſs of Bedford, and traverse that the inhabitants of the honor of Leiceſter are exempt from toll. Surrejoinder to the 1ſt rejoinder, taking iſſue on the traverse, - Mor. Pr. 644 to 651
- Plea (to treſpaſs *quare domum fregit*, and for ſeizing and carrying away plaintiff's goods), that defendant ſeiſed in ſee of *locus*, &c. and demitted to plaintiff for a year, and entered to diſtrain for rent due, - Pl. Aff. 445
- Plea, that *locus*, &c. is within the manor of, &c. and that defendant was a ſuitor of the manor court, and juſtifies the ſeizure for a *fine* amerced and aſſeſſed upon defendant for not appearing after being duly ſummoned. Replication, that plaintiff was not ſummoned, and iſſue, - Ibid. 504
- Plea (to treſpaſs againſt ſeveral for breaking plaintiff's cloſe and taking three cows), by one not guilty to force, and breaking, and entering, and a juſtification taking the cows as a diſtreſs for *rent*. Replication, cattle were not levant and couchant. Rejoinder, on levancy, &c. and iſſue, 3. Ld. Raym. 134. N. Ed.
- Plea (to treſpaſs againſt two for breaking plaintiff's cloſe called H. in the pariſh of R. treading down the graſs, and depaſturing the graſs, and for chaſing, taking, and impounding plaintiff's ſheep), by one by attorney, the other by guardian, not guilty to all the treſpaſſes except the chaſing and impounding, and as to that defendants juſtify for damage feaſant in the New Orchard, and traverses the place in the declaration. Demurrer and joinder, - Ibid. 113
- Plea (to treſpaſs for carrying away ten *ſtanneorum*), by letters patent Ed. 4. granted to the men of the miſtery of *ſciſſorum*, in the guild of Exeter, with power to make ordinances among themſelves for the better government of the company, and to be a body corporate; a bye law was made, that any perſon of that company that reproached, abuſed, or uſed any ſcurrilous or opprobrious language to the maſter and keeper, &c. ſhould pay three ſhillings and fourpence; plaintiff was guilty, and did not pay, *per quod* defendant as beadle of the company, by the maſter and keeper's warrant for a diſtreſs and ſale *oſſio aperto* took, &c. for three ſhillings and fourpence. Demurrer and judgment for plaintiff, the bye law to levy by diſtreſs and ſale being illegal, 3. Lev. 276, &c.
- Plea, by one defendant, lord of a manor, of juſtification for an *amerciament* in a leet, and traverses that he is guilty before the day, and by the other that he came to his aſſiſtance as a ſervant, and traverses before. Replication thereto, *Ra. Ent.* 606.

RENT—SERVICES.

- That N. ſeiſed of two houſes held of defendant within the hundred, within which there is a cuſtom that the lords had a *heriot* after tenant's death. Replication, as to one houſe which is without the hundred, and to the other hundred no ſuch cuſtom, *Upp.* 222.

Plea (to trespass for taking three cows, and an assault) ; to trespass, that the king, seised of the manor, granted the messuages and two lofts, being customary tenements, to J. for life ; and that there is a custom that the wives may have their free bench, and the lords a *heriot* for every house and loft after the death of each tenant ; the king granted the manor in fee, &c. and justifies taking three cows for three heriots after the death of the tenant's wife, and to the assault, *de insultu proprio*. Replication, that by custom customary tenants in fee paid a heriot, and defendant *de injuria* took the cows, and traverses custom alledged by defendant, 3. Br. 402.

Plea (to taking cattle) for not doing suit to the hundred. Replication, that defendant milked the cows, and worked the horses, *Vet. Int.* 156.

Plea that plaintiff holds the close of the prior by fealty rent fourteen pence and suit of court, and defendant as servant came into the close to distrain for rent. Replication, that plaintiff held the close of the prior by twopence rent unpaid, and traverses holding by rent of fourteen pence, *Ra.* 672.

Plea, that plaintiff holds of defendant by fealty and rent of two shillings, who distrained cattle for rent. Replication, that he holds by fealty and rent of sixpence unpaid, and traverses that he holds by fealty and rent of two shillings, *Ra.* 672.

Like plea. Replication that the house is out of the fee, *Ra.* 672. *Vet. Int.* 123. Replication, *de injuria*.

That plaintiff holds manor of R. whereof, &c. of the king as of the manor of D. parcel of the duchy of Lancaster by homage, fealty, and rent. Replication, *de injuria*, *Ra.* 673. *Vet. Int.* 101.

That plaintiff holds house, &c. of defendant by fealty and rent, and that defendant came to distrain for rent unpaid, and prays judgment of the writ prosecuted *vi et armis*. Replication, that he did the trespass, and traverses defendant's tenure, *Ra.* 680.

FOR FINES AND AMERCIAMENTS.

That bishop, seised of the manor, had a view of frankpledge, and plaintiff was presented there for erecting seven cottages for a nuisance to the lord of the manor, and was *amerced* there at seventy shillings, for which defendant as bailiff of a manor, by the precept of the bishop (who by bailiff used to distrain for an amercement forfeited within the manor) entered into the cottage and took the goods as a distress for the amercement, *Tho.* 311.

That R. seised of manor, had a view of frankpledge, and plaintiff was resiant, and for *not appearing* steward imposed a *fine* of forty shillings on him, and the lord of the manor used by bailiff to distrain for all fines ; and because plaintiff did not pay the fine defendants as bailiffs, and by command of R. took and distrained the heifers (*vacallus*) until, &c. *Tho.* 347.

That the king, seised of the hundred, held a court, and it was a custom within the hundred that the freeholders making default at court should be *amerced* at two shillings and eight-pence, and bailiff of the same hundred was used to distrain for the *amercement* unpaid, that plaintiff is a freeholder, and for several defaults and non-payment of them on demand of defendant bailiff of the hundred took the cow. Replication, *de injuria*, *Bro. R.* 478. 1. Br. 175.

That defendant, bailiff of a manor, by the steward's warrant, took the cattle to levy six pounds *forfeited* by plaintiff for receiving inmates into their cottage, *Co. Int.* 655.

That abbey, seised of the hundred had a torn belonging to it, to be held annually, and plaintiff was seised of land adjoining a pool in the highway, that plaintiff ought to repair, and for default of repairing was *amerced* by the jury at the court of the torn, and assessed at three shillings, and defendant, as bailiff, for the amercement unpaid took the heifer. Replication, that plaintiff was possessed

INDEX TO LEADING TITLES OR HEADS

of the heifer as his own heifer, until the trespass, and traverses the prescription to repair, *Tho.* 480. v. *Br.* 181.

That J. seized of manor, had a view of frankpledge, and plaintiff was presented there for breaking a house in the night, and amerced at forty shillings, for which bailiff of the manor, by warrant, distrained on plaintiff by horse and goods, which remained for want of buyers. Replication, that he was not presented, &c. *Ra.* 606.

Plea by one defendant as lord of the manor, justification taking the goods for an amerciament in the leet for a nuisance, and traverse being guilty before; by the other, that he came to the aid of his master as his servant, and traverses as before. Replication, that *locus*, &c. is called C. which is without the precinct of the leet. Rejoinder, that *locus*, &c. is parcel of the waikes of the manor, and within the precinct of the leet, *Ra.* 606. *Vet. Int.* 156.

That W. seized of hundred to which there belonged a leet, demised to C. who assigned to defendant, who took a cow for an amerciament of plaintiff inhabitant within the hundred, for default of the appearance at the court, and another amerciament for making an affray. Replication, *de injuria*, 3. *Br.* 451.

DISTRESSES DAMAGE FEASANT, &c.—CATTLE.

Plea, *son assault damejne* to the assault, and justifies taking the ram as a distress damage feasant, *Bro. Vad.* 427.

Plea, by one defendant justifying taking the horse damage feasant, and by another that he came with him as a friend, *Ra. Ent.* 628. Plea special by one defendant, by the other that he came as servant, *Ra. Ent.* 632. 635. 637.

Plea (to taking and leading away a cow), that he took the cow as a distress for rent, and led her to the pound, which plaintiff would have rescued. Replication, *de injuria*, &c. *Wi. Ent.* 984.

Plea (to chasing a heifer), that defendant is seized of the close in which he found the heifer damage feasant, and drove her into plaintiff's close adjoining. Replication, prescribes to a right of way, *Wi. Ent.* 990.

Plea, justification impounding a horse. Replication, that he impounded him in a pound close (a house shut up), so that plaintiff could not give him fodder, &c. Rejoinder, that he impounded in pound overt, *Gl. Aff.* 94.

Plea (to chasing and striking a heifer), that *locus*, &c. is freehold of A. and defendant as his servant took the cow damage feasant there, and raised, drove, and struck to impound, but traverses that he so violently chased and struck till it died. Replication, and issue on the traverse, *Bro. R.* 496.

Plea (to taking and impounding sheep in a close called H.) of justification damage feasant in the close of one of the defendants called the New Orchard, in R. with traverse of chasing, taking, and impounding in the close in the declaration. Demurrer, and court inclined for defendant on the general demurrer, 2. *Lut.* 1447.

Plea (to taking and leading away four foals at M. and taking and carrying away a gelding, and breaking his close called the Lev Ground), to the taking, &c. the four foals and gelding, that he was possessed of a piece of pasture called, &c. and justifies damage feasant; to the residue, that at M. there are many closes called Ley of Ground, but none without other additions, and that the close in *quo*, &c. was called *Garlick's Ley of Ground* his freehold, and so justifies. Demurrer, that pleas are double, and amount to the general issue, and judgment for the plaintiff, because the first plea, that defendant was possessed, &c. was not good, and being bad in part was bad for the whole, 2. *Lut.* 1489.

Plea as to part, *non cul.*; to residue, justification distress of cattle under the authority of common sjoners of sewers under the great seal of England, and under the seal of our

- our lord the king of his dutchy of Lancaster, *Re. Dec.* 406. Replication, *de injuria, &c.* and issue.
- Plea as to part, *non cul.*; to residue impounding cattle damage feasant, *Re. D. c.* 409.
- Plea, justification impounding cattle *damage feasant* as bailiff to the mayor and burgesses of the borough of Christchurch, who were seised in fee of the after pasture of B. mead every year after the grass was mowed and the hay coming thereof was carried off until Candlemas following. Replication, *de injuria, &c.* and traverses the seisin in fee of the mayor and the burgesses. Rejoinder, and issue on the traverse, *Bro V. ad.* 124.
- Plea of *sen assaut domestre* to the assault, and to carrying away the plaintiff's ram justifies as servant to J. D. in the name of a distress *damage feasant*. Replication, *de injuria, &c.* as to both, and issues, *Bro V. ad.* 425.
- That defendant took horse *damage feasant* in his freehold, and impounded him. Replication, plaintiff's freehold is not defendant's, *Ra.* 628.
- That defendant and his wife are seised of one hundred acres of land in which defendant took and impounded sheep *damage feasant*. Replication, *de injuria, Ra.* 628.
- Plea (to trespass for driving and striking sheep), that *locus, &c.* is freehold of defendant, who gently drove and struck them *damage feasant*, 3. *Br.* 144.

FOR FINES—GOODS.

- That *locus, &c.* descended to T. who entered, and defendant as his servant found the goods there *damage feasant*.
- Plea, *non cul.* to part; to residue, defendant justifies taking the goods under a bye law or forfeiture of three shillings and eightpence, for misconduct in the company of taylors at Exeter, 3. *Lew.* 276.
- Justification of taking and carrying away goods under a bye law of the taylors of the city of London, that if any person should absent himself from a reasonable dinner, he should pay such proportion to the stock that the master should pay to his dinner, under a penalty of three shillings and fourpence, with power to distrain; that plaintiff forfeited and did not pay, for which, &c. Demurrer, and judgment for plaintiff, "because no notice was given, nor precise demand made of the exact sum the master had paid," 2. *Lut.* 1320.
- That city of N. was an ancient city, within which was a custom that no inhabitant or other person, not being free, should buy or sell any wares within the city of N. or to any person, not being free, under penalty of forfeiture of the wares so bought and sold to the use, &c. that plaintiff being free bought leather of one R. who was not free, *per quod* the defendant as citizen in the name of a distress for the forfeiture, seized and carried away the leather to the use, &c. Replication, that *per fraudem* it was agreed between the defendant and the said R. that R. should sell the leather and affirm that he was free, that R. in buying of leather by defendant affirmed. Rejoinder, maintaining the bar, and traverse the agreement, and issue, 2. *Bro.* 139. Like plea, *Tho.* 401.
- That within the city there is a custom that the master of a company of Smiths should examine the iron wares imported by a stranger to be sold at the market there, and the goods that are fraudulently made should carry to the mayor to examine, and make order concerning them; the plaintiff a stranger, imported the goods to be sold at market, and defendant being master, on examination, found them to be fraudulently made, *per quod* they carried to the mayor according to custom, &c. which is the same taking and carrying away, *Tho.* 330.
- That the city of B. is an ancient city, and incorporated by name, &c. within which there was a custom that all goods by a stranger bought of a stranger were forfeited, to the mayor, &c. and as such liable to be seized to the use, &c. by any citizen; plaintiff.

plaintiff being a stranger. bought goods of the stranger; that defendants, as citizens, took. Replication, protesting several matters; first, that there is no such custom; second, that he did not buy goods of a stranger; third, that city is not an ancient city; for plea, maintains the declaration; and traverses that the citizens and free men of the city of B. were a body politic, incorporated by the name of, &c. Rejoinder, and issue on the traverse, *Tbo.* 401. Like plea, 2. *Bro.*

139.

Plea (to trespass for taking forty shoes and twenty pieces of leather), to part, *nōn cul*; to residue, justification by force of 1. Jac. 1. c. 22. (which is mis recited). Demurrer, and judgment for plaintiff, 2. *Lut.* 1402. Like justification. Replication, *de injuria*, &c. and issue, *Bro. Vād.* 432.

That the town of B. was an ancient town incorporated, and plaintiff inhabited in the country, not being a freeman of the same town, and on a certain day, not being in any market in the said town, plaintiff brought the wares there to sell by retail, and sold parcel, &c. against the form of the statute; *per quod*, defendant being one of the bailiffs of the town, the residue of goods not sold he took as forfeited. Replication, that plaintiff was an inhabitant in the town of T. which was a market town, and the day in the declaration being market day in the town of B. plaintiff brought wares to be sold in the public market. Demurrer, *Bro.* R. 489.

DISTRESSES, DAMAGE FEASANT—BY OCCUPIER. (See COMMONERS AND RIGHT OF COMMON, *post*.)

Plea (to trespass for impounding sheep), that D. was seised of a large *augette* called the H.; and defendant, as his servant, took the cattle damage feasant. Replication, that J. seised of the manor of C. had *common* in the waste for his farmers and customary tenants for all cattle commonable upon the tenements levant, &c. and that plaintiff being customary tenant of the messuages and lands, put in the sheep. Rejoinder, maintaining the plea, and traverses the prescription, and issue, 2. *Bro.* 269.

That C. seised of a close, &c. and defendant as his servant, and by command of C. he gently drove the cattle damage feasant there out of the close. Replication, confessing the seisin of C. but that he being seised of the messuages and land, had *common* in the close, &c. for all sheep on the tenements levant &c. throughout the year. Rejoinder, maintaining plea, and traverses prescription and issue, *Tbo.* 19. Like replication of *common* for all cattle annually from a certain day to a certain other day, *Tbo.* 335.

That W. seised of a manor with a court leet, there was a custom for the homage to elect four tenants of the manor to overlook the common, and to impound the cattle of persons not having *common*, that defendant being one, and finding the cow damage feasant, impounded it. Replication, that L. seised of the messuages, &c. had *common* in *locus*, &c. for all commonable cattle from a certain feast day to another feast day, and demised to plaintiff, who put in his cattle. Rejoinder, maintains plea, and traverses prescription, *Wt. Ent.* 977.

RENTS, SERVICES, FINES.

Plea, that defendant seised of houses, demised to plaintiff for years, rendering rent, and took goods for rent. Replication, *de injuria*, *Tbo.* 313. 398.

That J. seised, granted annual rent to W. for eight years from the death of J. who died, and W. was possessed of the annual rent and died intestate, and administration granted to defendant, who distrained for rent unpaid; *Tbo.* 341.

Justifi-

Justification by distress for rent arrear, *Bro. Vad.* 410. Demurrer, *Ibid.* 412.

That plaintiff held of defendant by *fealty* and rent two shillings, and distrained for the rent. Replication, *de injuria*, *Tho.* 357. 419. *Ra.* 672. Replication, held by sixpence rent; and traverse held by fealty and rent.

That the manor of S. is held of the queen as of the honour of C.; that within the honour there is a custom, that upon descent or alienation of lands held of the manor of S. the person to whom such lands should come pays to the lord of the honour *fines* called alienation, fines, for which the *bailiff* of the honour is used to impound and detain the goods and chattels until, &c. that lands whereof, &c. descended to plaintiff, and for *fine unpaid* defendant, as bailiff of queen, took and impounded the cattle. Replication, *de injuria*; and traverses the custom, and issue, *Ro. Ent.* 453. 2. *Lut.* 1298.

That plaintiff's father was seised of two houses held of the bishop as of his manor of K. by *fealty, rent,* and *suit of court*, and custom that the lord had the best beast for every house after the death of tenant for heriot; plaintiff's father died, and defendant, as servant of the bishop, took the cattle as an *heriot*, *Pl. Gen.* 607. 2. *Lut.* 1310.

Plea (to trespass by *executor* for taking a cow), that lord of the manor had a customary *heriot* after the death of tenant of the house and loft; and defendant, as servant of lord of the manor, took the cow for an *heriot*. Demurrer special, and judgment for defendant, *Wi. Ent.* 62.

Plea, that A. seised of messuages, &c. demised to T. for lives of B. J. and G. rendering rent and heriot, or three pounds in lieu thereof at the election of A. on the death of each B. J. and G. unless upon the death of J. living G. B. or by G. living B. or by G. living B. or J. &c. A. sold to W. from whom it descended to D. who after the death of B. and J. took two oxen for a *heriot*. Replication, that B. and J. are alive; and traverse that either of them died before trespass committed. Rejoinder, and issue, *Tho.* 267.

That J. seised of messuages and lands held of the manor by fealty, rent, and suit of court, and that E. lord of the manor, had a customary *heriot* of all tenants aliening. J. whilst sole, alienated and was possessed of a cow, and after married plaintiff; defendant, as servant of E. took the cattle as best beast for alienation. Replication, protesting, &c.; for plea, that before E. had any thing in the manor T. was seised, who confirmed to one W. then seised of the said messuage and lands, the whole estate in them of the said T. by rent and service aforesaid, only to hold the estate which plaintiff had in right of his wife. 1. *Bro.* 352.

That P. S. defendant's grandfather, being seised, demised to D. E. his executor, and assigned for ninety-nine years, if he and one M. U. should so long live, rendering after the death of D. and M. or either of them, the best beast, or forty shillings in lieu thereof, provided that no *heriot* should be after death of M. living D.; that the reversion, by several descents, came to defendant, and D. took plaintiff to *husband* and died, and afterwards M. died, on which, &c. Demurrer by plaintiff after *oyer* of indenture. 2. *Lut.* 1361.

Plea (to count against *husband and wife* for breaking and entering his close, and carrying away his goods), to all except breaking, &c. *non cul.* and to those a justification for distress by rent reserved on lease made by husband to plaintiff. Replication, that the wife, after the distress, used and sold the goods. Rejoinder, that it is a justification by force of the statute W. and M. c. 5. which gives power to sell distresses. Demurrer and judgment for plaintiff for fault in the plea, 2. *Lut.* 1421.

Plea (to declaration for taking cattle 21st of April 1701, and of other cattle on the same day), a demise of part of a rectory reserving *rent*, and that seventy-seven pounds ten shillings was in arrear, and so justifies the first taking for sixty two pounds ten shillings parcel, and the last taking for the residue. Demurrer, and

- that the honor of Leicester is an ancient honor, and that the inhabitants thereof are quit and exempt from the payment of toll throughout the realm, and that plaintiff is an inhabitant of that honor, and that the cattle were his own; and that defendant had notice, yet defendant of his own wrong took said cattle, &c. 2d, *de injuria*, &c. and that the cattle came as estrays. Rejoinder, that the plaintiff is not a burgeess of Bedford, and traverse that the inhabitants of the honor of Leicester are exempt from toll. Surrejoinder to the 1st rejoinder, taking issue on the traverse, - Mor. Pr. 644 to 651
- Plea (to trespass *quare domum fregit*, and for seizing and carrying away plaintiff's goods), that defendant seized in fee of *locus*, &c. and demised to plaintiff for a year, and entered to distrain for rent due, - Pl. Ass. 445
- Plea, that *locus*, &c. is within the manor of, &c. and that defendant was a suitor of the manor court, and justifies the seizure for a *fine* amerced and assented upon defendant for not appearing after being duly summoned. Replication, that plaintiff was not summoned, and issue, - Ibid. 504
- Plea (to trespass against several for breaking plaintiff's close and taking three cows), by one not guilty to force, and breaking, and entering, and a justification taking the cows as a distress for *rent*. Replication, cattle were not levant and couchant. Rejoinder, on levancy, &c. and issue, 3. Ld. Raym. 134. N. Ed.
- Plea (to trespass against two for breaking plaintiff's close called H. in the parish of R. treading down the grass, and depasturing the grass, and for chasing, taking, and impounding plaintiff's sheep), by one by attorney, the other by guardian, not guilty to all the trespasses except the chasing and impounding, and as to that defendants justify for damage feasant in the New Orchard, and traverses the place in the declaration. Demurrer and joinder, - Ibid. 113
- Plea (to trespass for carrying away ten *flanneorum*), by letters patent Ed. 4. granted to the men of the mystery of *scissorum*, in the guild of Exeter, with power to make ordinances among themselves for the better government of the company, and to be a body corporate; a bye law was made; that any person of that company that reproached, abused, or used any scurrilous or opprobrious language to the master and keeper, &c. should pay three shillings and fourpence; plaintiff was guilty, and did not pay, *per quod* defendant as beadle of the company, by the master and keeper's warrant for a distress and sale *ostio aperto* took, &c. for three shillings and fourpence. Demurrer and judgment for plaintiff, the bye law to levy by distress and sale being illegal, 3. Lev. 276, &c.
- Plea, by one defendant, lord of a manor, of justification for an *amerciament* in a leet, and traverses that he is guilty before the day, and by the other that he came to his assistance as a servant, and traverses before. Replication thereto, *Ra. Ent.* 606.

RENT—SERVICES.

That N. seized of two houses held of defendant within the hundred, within which there is a custom that the lords had a *heriot* after tenant's death. Replication, as to one house which is without the hundred, and to the other hundred no such custom, *Upp.* 222.

Plea (to trespass for taking three cows, and an assault) ; to trespass, that the king, seised of the manor, granted the messuages and two lofts, being customary tenements, to J. for life ; and that there is a custom that the wives may have their free bench, and the lords a *heriot* for every house and loft after the death of each tenant ; the king granted the manor in fee, &c. and justifies taking three cows for three heriots after the death of the tenant's wife, and to the assault, *de insultu proprio*. Replication, that by custom customary tenants in fee paid a heriot, and defendant *de injuria* took the cows, and traverses custom alledged by defendant, 3. Br. 402.

Plea (to taking cattle) for not doing suit to the hundred. Replication, that defendant milked the cows, and worked the horses, *Vet. Int.* 156.

Plea that plaintiff holds the close of the prior by fealty rent fourteen pence and suit of court, and defendant as servant came into the close to distrain for rent. Replication, that plaintiff held the close of the prior by twopence rent unpaid, and traverses holding by rent of fourteen pence, *Ra.* 672.

Plea, that plaintiff holds of defendant by fealty and rent of two shillings, who distrained cattle for rent. Replication, that he holds by fealty and rent of sixpence unpaid, and traverses that he holds by fealty and rent of two shillings, *Ra.* 672. Like plea. Replication that the house is out of the fee, *Ra.* 672. *Vet. Int.* 123. Replication, *de injuria*.

That plaintiff holds manor of R. whereof, &c. of the king as of the manor of D. parcel of the duchy of Lancaster by homage, fealty, and rent. Replication, *de injuria*, *Ra.* 673. *Vet. Int.* 101.

That plaintiff holds house, &c. of defendant by fealty and rent, and that defendant came to distrain for rent unpaid, and prays judgment of the writ prosecuted *vi et armis*. R. plication, that he did the trespass, and traverses defendant's tenure, *Ra.* 680.

FOR FINES AND AMERCIAMENTS.

That bishop, seised of the manor, had a view of frankpledge, and plaintiff was presented there for erecting seven cottages for a nuisance to the lord of the manor, and was amerced there at seventy shillings, for which defendant as bailiff of a manor, by the precept of the bishop (who by bailiff used to distrain for an amercement forfeited within the manor) entered into the cottage and took the goods as a distress for the amercement, *Tho.* 311.

That R. seised of manor, had a view of frankpledge, and plaintiff was resiant, and for not appearing steward imposed a fine of forty shillings on him, and the lord of the manor used by bailiff to distrain for all fines ; and because plaintiff did not pay the fine defendants as bailiffs, and by command of R. took and distrained the heifers (*vacillus*) until, &c. *Tho.* 347.

That the king, seised of the hundred, held a court, and it was a custom within the hundred that the freeholders making default at court should be amerced at two shillings and eight-pence, and bailiff of the same hundred was used to distrain for the amercement unpaid, that plaintiff is a freeholder, and for several defaults and non-payment of them on demand of defendant bailiff of the hundred took the cow. Replication, *de injuria*, *Bro R.* 478. 1. Br. 175.

That defendant, bailiff of a manor, by the steward's warrant, took the cattle to levy six pounds forfeited by plaintiff for receiving inmates into their cottage, *Co. Int.* 655.

That abbey, seised of the hundred had a torn belonging to it, to be held annually, and plaintiff was seised of land adjoining a pool in the highway, that plaintiff ought to repair, and for default of repairing was amerced by the jury at the court of the torn, and assessed at three shillings, and defendant, as bailiff, for the amercement unpaid took the heifer. Replication, that plaintiff was possessed

of the heifer as his own heifer, until the trespass, and traverses the prescription to repair, *Tbp.* 480. v. *Br.* 181.

That J. seized of manor, had a view of frankpledge, and plaintiff was presented there for breaking a house in the night, and amerced at forty shillings, for which bailiff of the manor, by warrant, distrained on plaintiff by horse and goods, which remained for want of buyers. Replication, that he was not presented, &c. *Ra.* 606.

Plea by one defendant as lord of the manor, justification taking the goods for an amerciamen in the leet for a nuisance, and traverse being guilty before; by the other, that he came to the aid of his master as his servant, and traverses as before. Replication, that *locus*, &c. is called C. which is without the precinct of the leet. Rejoinder, that *locus*, &c. is parcel of the wastes of the manor, and within the precinct of the leet, *Ra.* 606. *Vet. Int.* 156.

That W. seized of hundred to which there belonged a leet, demised to C. who assigned to defendant, who took a cow for an amerciamen of plaintiff inhabitant within the hundred, for default of the appearance at the court, and another amerciamen for making an assay. Replication, *de injuria*, 3. *Br.* 451.

DISTRESSES DAMAGE FEASANT, &c.—CATTLE.

Plea, *son essant de meisme* to the assault, and justifies taking the ram as a distress damage feasant, *Bro. Vad.* 427.

Plea, by one defendant justifying taking the horse damage feasant, and by another that he came with him as a friend, *Ra. Ent.* 628. Plea special by one defendant, by the other that he came as servant, *Ra. Ent.* 632. 635. 637.

Plea (to taking and leading away a cow), that he took the cow as a distress for rent, and led her to the pound, which plaintiff would have rescued. Replication, *de injuria*, &c. *Wi. Ent.* 984.

Plea (to chasing a heifer), that defendant is seized of the close in which he found the heifer damage feasant, and drove her into plaintiff's close adjoining. Replication, prescribes in a right of way, *Wi. Ent.* 990.

Plea, justification impounding a horse. Replication, that he impounded him in a pound close (a house shut up), so that plaintiff could not give him fodder, &c. Rejoinder, that he impounded in pound overt, *Cl. Aff.* 94.

Plea (to chasing and striking a heifer), that *locus*, &c. is freehold of A. and defendant as his servant took the cow damage feasant there, and raised, drove, and struck to impound, but traverses that he so violently chased and struck till it died. Replication, and issue on the traverse, *Bro. R.* 436.

Plea (to taking and impounding sheep in a close called H.) of justification damage feasant in the close of one of the defendants called the New Orchard, in R. with traverse of chasing, taking, and impounding in the close in the declaration. Demurrer, and court inclined for defendant on the general demurrer, 2. *Lut.* 1447.

Plea (to taking and leading away four foals at M. and taking and carrying away a gelding, and breaking his close called the Lev Ground), to the taking, &c. the four foals and gelding, that he was possessed of a piece of pasture called, &c. and justifies damage feasant; to the residue, that at M. there are many closes called Ley of Ground, but none without other additions, and that the close in *quo*, &c. was called *Garlick's Ley of Ground* his freehold, and so justifies. Demurrer, that pleas are double, and amount to the general issue, and judgment for the plaintiff, because the first plea, that defendant was possessed, &c. was not good, and being bad in part was bad for the whole, 2. *Lut.* 1489.

Plea as to part, *non cul.*; to residue, justification distress of cattle under the authority of commissioners of sewers under the great seal of England, and under the seal of our

our lord the king of his dutchy of Lancaster, *Re. Dec. 406.* Replication, *de injuria, &c.* and issue.

Plea as to part, *non cul.*; to residue impounding cattle damage feasant, *Re. D. c. 409.*

Plea, justification impounding cattle *damage feasant* as bailiff to the mayor and burgesses of the borough of Christchurch, who were seized in fee of the after pasture of B. mead every year after the grass was mowed and the hay coming thereof was carried off until Candlemas following. Replication, *de injuria, &c.* and traverse the seizure in fee of the mayor and the burgesses. Rejoinder, and issue on the traverse, *Bro. P. ad. 124.*

Plea of *sen assauti damper* to the assault, and to carrying away the plaintiff's ram, justifies as servant to J. D. in the name of a duress *damage feasant*. Replication, *de injuria, &c.* as to both, and issues, *Bro. P. ad. 425.*

That defendant took horse *damage feasant* in his freehold, and impounded him. Replication, plaintiff's freehold is not defendant's, *Ra. 628.*

That defendant and his wife are seized of one hundred acres of land in which defendant took and impounded sheep *damage feasant*. Replication, *de injuria, Ra. 628.*

Plea (to trespass for driving and striking sheep), that *locus, &c.* is trechold of defendant, who gently drove and struck them *damage feasant*, 3. *Br. 144.*

FOR FINES—GOODS.

That *locus, &c.* descended to T. who entered, and defendant as his servant found the goods there *damage feasant*.

Plea, *non cul.* to part; to residue, defendant justifies taking the goods under a *bye law or forfeiture* of three shillings and eightpence, for misconduct in the company of taylors at Exeter, 3. *Lev. 276.*

Justification of taking and carrying away goods under a bye law of the taylors of the city of London, that if any person should absent himself from a reasonable dinner, he should pay such proportion to the flock that the master should pay to his dinner, under a penalty of three shillings and fourpence, with power to distrain; that plaintiff forfeited and did not pay, for which, &c. Demurrer, and judgment for plaintiff, "because no notice was given, nor precise demand made of the exact sum the master had paid," 2. *Lut. 1320.*

That city of N. was an ancient city, within which was a custom that no inhabitant or other person, not being free, should buy or sell any wares within the city of N. or to any person, not being free, under penalty of forfeiture of the wares so bought and sold to the use, &c. that plaintiff being free bought leather of one R. who was not free, *per quod* the defendant as citizen in the name of a *distress* for the forfeiture, seized and carried away the leather to the use, &c. Replication, that *per fraudem* it was agreed between the defendant and the said R. that R. should sell the leather and affirm that he was free, that R. in buying of leather by defendant affirmed. Rejoinder, maintaining the bar, and traverse the agreement, and issue, 2. *Bro. 139.* Like plea, *Tho. 401.*

That within the city there is a custom that the master of a company of Smiths should examine the iron wares imported by a stranger to be sold at the market there, and the goods that are fraudulently made should carry to the mayor to examine, and make order concerning them; the plaintiff a stranger, imported the goods to be sold at market, and defendant being master, on examination, found them to be fraudulently made, *per quod* they carried to the mayor according to custom, &c. which is the same taking and carrying away, *Tho. 330.*

That the city of B. is an ancient city, and incorporated by name, &c. within which there was a custom that all goods by a stranger bought of a stranger were forfeited to the mayor, &c. and as such liable to be seized to the use, &c. by any citizen.

plaintiff being a stranger. bought goods of the stranger; that defendants, as citizens, took. Replication, protesting several matters; first, that there is no such custom; second, that he did not buy goods of a stranger; third, that city is not an ancient city; for plea, maintains the declaration; and traverses that the citizens and free men of the city of B. were a body politic, incorporated by the name of, &c. Rejoinder, and issue on the traverse, *Tho.* 401. Like plea, 2. *Bro.* 139.

Plea (to trespass for taking forty shoes and twenty pieces of leather), to part, *non est*; to residue, justification by force of 1. Jac. 1. c. 22. (which is mis-recited) Demurrer, and judgment for plaintiff, 2. *Lut.* 1402. Like justification. Replication, *de injuria*, &c. and issue, *Bro. Vad.* 432.

That the town of B. was an ancient town incorporated, and plaintiff inhabited in the country, not being a freeman of the same town, and on a certain day, not being in any market in the said town, plaintiff brought the wares there to sell by retail, and sold parcel, &c. against the form of the statute; *per quod*, defendant being one of the bailiffs of the town, the residue of goods not sold he took as *seized*. Replication, that plaintiff was an inhabitant in the town of T. which was a market town, and the day in the declaration being market day in the town of B. plaintiff brought wares to be sold in the public market. Demurrer, *Bro. R.* 489.

DISTRESSES, DAMAGE FEASANT—BY OCCUPIER. (See COMMONERS AND RIGHT OF COMMON, *post*.)

Plea (to trespass for impounding sheep), that D. was seized of a large *waste* called the H.; and defendant, as his servant, took the cattle damage feasant. Replication, that J. seized of the manor of C. had *common* in the waste for his farmers and customary tenants for all cattle commonable upon the tenements levant, &c. and that plaintiff being customary tenant of the messuages and lands put in the sheep. Rejoinder, maintaining the plea, and traverses the prescription, and issue, 2. *Bro.* 269.

That C. seized of a close, &c. and defendant as his servant, and by command of C. he gently drove the cattle damage feasant there out of the close. Replication, confessing the seisin of C. but that he being seized of the messuages and land, had *common* in the close, &c. for all sheep on the tenements levant &c. throughout the year. Rejoinder, maintaining plea, and traverses prescription and issue, *Tho.* 19. Like replication of *common* for all cattle annually from a certain day to a certain other day, *Tho.* 335.

That W. seized of a manor with a court leet, there was a custom for the homage to elect four tenants of the manor to overlook the common, and to impound the cattle of persons not having *common*, that defendant being one, and finding the cow damage feasant, impounded it. Replication, that L. seized of the messuages, &c. had *common* in locus, &c. for all commonable cattle from a certain feast day to another feast day, and demurred to plaintiff, who put in his cattle. Rejoinder, maintains plea, and traverses prescription, *W. Ent.* 977.

RENTS, SERVICES, FINES.

Plea, that defendant seized of houses, demised to plaintiff for years, rendering rent, and took goods for rent. Replication, *de injuria*, *Tho.* 313. 398.

That J. seized, granted annual rent to W. for eight years from the death of J. who died, and W. was possessed of the annual rent and died intestate, and administration granted to defendant, who distrained for rent unpaid; *Tho.* 341.

Justifi-

Justification by distress for rent arrear, *Bro. Vad.* 410. Demurrer, *Ibid.* 412.

That plaintiff held of defendant by *fealty* and rent two shillings, and distrained for the rent. Replication, *de injuria, Tho.* 357. 419. *Ra.* 672. Replication, held by sixpence rent; and traverse held by fealty and rent.

That the manor of S. is held of the queen as of the honour of C.; that within the honour there is a custom, that upon descent or alienation of lands held of the manor of S. the person to whom such lands should come pays to the lord of the honour *fincs* called alienation, fines, for which the *bailiff* of the honour is used to impound and detain the goods and chattels until, &c. that lands whereof, &c. descended to plaintiff, and for *fine unpaid* defendant, as bailiff of queen, took and impounded the cattle. Replication, *de injuria*; and traverses the custom, and issue, *Ro. Ent.* 453. 2. *Lut.* 1298.

That plaintiff's father was seised of two houses held of the bishop as of his manor of K. by *fealty, rent, and suit of court*, and custom that the lord had the best beast for every house after the death of tenant for heriot; plaintiff's father died, and defendant, as servant of the bishop, took the cattle as an *heriot*, *Pl. Gen.* 607. 2. *Lut.* 1310.

Plea (to trespass by *executor* for taking a cow), that lord of the manor had a customary *heriot* after the death of tenant of the house and lost; and defendant, as servant of lord of the manor, took the cow for an heriot. Demurrer special, and judgment for defendant, *Wi. Ent.* 62.

Plea, that A. seised of messuages, &c. demised to T. for lives of B. J. and G. rendering rent and heriot, or three pounds in lieu thereof at the election of A. on the death of each B. J. and G. unless upon the death of J. living G. B. or by G. living B. or by G. living B. or J. &c. A. sold to W. from whom it descended to D. who after the death of B. and J. took two oxen for a *heriot*. Replication, that B. and J. are alive; and traverse that either of them died before trespass committed. Rejoinder, and issue, *Tho.* 267.

That J. seised of messuages and lands held of the manor by fealty, rent, and suit of court, and that E. lord of the manor, had a customary *heriot* of all tenants aliening. J. whilst sole, alienated and was possessed of a cow, and after married plaintiff; defendant, as servant of E. took the cattle as best beast for alienation. Replication, protesting, &c.; for plea, that before E. had any thing in the manor E. was seised, who confirmed to one W. then seised of the said messuage and lands, the whole estate in them of the said E. by rent and service aforesaid, only to hold the estate which plaintiff had in right of his wife. 1. *Bro.* 352.

That P. S. defendant's grandfather, being seised, demised to D. E. his executor, and assigned for ninety-nine years, if he and one M. U. should so long live, rendering after the death of D. and M. or either of them, the best beast, or forty shillings in lieu thereof, provided that no *heriot* should be after death of M. living D.; that the reversion, by several descents, came to defendant, and D. took plaintiff to husband and died, and afterwards M. died, on which, &c. Demurrer by plaintiff after *oyer* of indenture, 2. *Lut.* 1361.

Plea (to count against husband and wife for breaking and entering his close, and carrying away his goods), to all except breaking, &c. *non cul.* and to those a justification for distress by rent reserved on lease made by husband to plaintiff. Replication, that the wife, after the distress, used and sold the goods. Rejoinder, that it is a justification by force of the statute W. and M. c. 5. which gives power to sell distresses. Demurrer and judgment for plaintiff for fault in the plea, 2. *Lut.* 1421.

Plea (to declaration for taking cattle 21st of April 1701, and of other cattle on the same day), a demise of part of a rectory reserving rent, and that seventy-seven pounds ten shillings was in arrear, and so justifies the first taking for sixty two pounds ten shillings parcel, and the last taking for the residue. Demurrer, and

INDEX TO LEADING TITLES OR HEADS

judgment for plaintiff; for one cannot have two distresses for the same rent, *2. Lut.* 1532.

Plea (to declaration for breaking close called B. Close, and taking three cows); not guilty to breaking B. Close; and to taking, &c. of the cows, that they took them in B. Meadow, of which (amongst other things) defendant C. and another were possessed for a term of years, &c. and demises them to one W. W. rendering certain rent, and for rent arrear distrain. Replication, that the cattle were not levant and couchant and issue and verdict for plaintiff, and judgment for him, as it was moved in arrest of judgment that the issue was immaterial, *2. Lut.* 1573.

That defendant, seised of lands, demised to plaintiff at will, rendering rent, and defendant took cattle for rent unpaid, *Ra.* 636.

That bishop, seised of a manor, demised parcel of the lands to R. for a year, and so from year to year, rendering rent, and one defendant as bailiff, and the others as servants, take the cattle on the lands for rent unpaid, and impounded them in the bishop's park, which R. broke, and led away the cattle which he gave to plaintiff, and defendant, on fresh pursuit, took them from plaintiff. Replication, that plaintiff was possessed of the lands until the trespass; and traverse that they took the cattle as a distress on the lands, *Ra.* 674.

That defendant, in right of his wife, was seised of lands by prescription, and distrained for rent unpaid. Replication, *de injuria*; and traverse that defendant was seised of rent by prescription, *Ra.* 673. *Vet. Int.* 155.

That abbot seised of the manors, granted the rent-charge to the chapter of Canterbury in fee, and defendant distrained for rent unpaid. Replication, *de injuria*; and traverse that there was any such chapter at the time of making the deed, *Ra.* 673.

Plea (to trespass by *administrator* for taking two oxen), that defendant, lord of the manor, had a customary heriot for all tenants alienating without licence, and that intestate aliened without licence. Replication, *de injuria*; and traverse that the lord of the manor had customary heriots, *Ra.* 650. *Upp.* 182.

Plea (to trespass by *executor* for an ox taken), that lords of the manor had customary heriots after the death of the tenant of the messuage or loft; and defendant, as servant of feoffee of the manor, took the ox for a heriot. Demurrer, *Co. Ent.* 39.

That E. was seised of lands held by fealty, rent, and suit of court, and a custom that the lord had a heriot after the death of the tenant, and if it should be eloiigned, then the best beast levant, the manor descended to K. who assigned to the mother for dower, and the married defendant, and died possessed of an ox, which was eloiigned; *per quod*, defendant took ox of plaintiff, tenant of lands there levant. Demurrer, *Co. Ent.* 666. *Dy.* 195.

CUSTOMS.

Plea to trespass, for taking and carrying away two hats at E.; that P. P. before the said time when, &c. was seised of the manor of G. whereof the vill of G. is parcel in fee, and prescribes to hold a certain *fair* in the vill of G. on a day certain annually, and *usage* to receive from every hatter for stallage two shillings and sixpence, and if he refused to take and distrain and detain till paid; and traverse that he is guilty at E. aforesaid, in said county of S. or any other place within the kingdom of Eng. and out of the said vill of G. in the county of K. Demurrer special, that plea does not answer declaration, and judgment for defendant, *3. Lev.* 244.

Plea to trespass for taking spiced cakes; that within the city of L. there is a custom to elect and swear annually six freemen of the company of bakers to be foreign bakers,

kers, to examine all spiced cakes and bread brought to the common markets by any foreigners, and to send and seize, and to send what is bad to the prisons, &c.; that he was elected and sworn a foreign baker, and that plaintiff being a foreigner, brought the cakes in the declaration to the Stocks Market, and on inspection he found them to be ill baked, and justifies the seizure; traversing that he is guilty at Westminster or out of the city, or at any other time. Demurrer and judgment for plaintiff, for that it was not averred that the cakes were not enough baked, 2. *Ent.* 1374.

Plea (to trespass for taking goods), prescription in dean and chapter for stallage in a fair; and issue on the prescription, and verdict for defendant, notwithstanding several objections in arrest of judgment, 2. *Lut.* 1517.

Plea to trespass for erecting a stall in a market place, that the manor of A. is ancient demesne, and that he was seised in fee of half an acre of land held of the said manor, and a custom for erecting a stall in the common market place every market day, and that being a butcher, did erect his stall on the market day to sell flesh. Plaintiff demurs specially as to the custom pleaded, and defendant pleading he erected stall to sell flesh, not saying *his* flesh, adjudged ill but amended, *Liv. Ent.* 194. 3. *Lev.* 490.

That he holds two fairs in the year, and one market every week annually at B. in a street there called M. street; in which street defendant, seised of a house by prescription, erected in *loco*, &c. seven stalls on every day of the fair and market for the sale of his goods and wares, and after the fair and market ended moved them out of the place; defendant put four stalls, which was the trespass; and traverses that he is guilty at any other time, *Bro. R.* 488.

That R. is an ancient borough by prescription, and governed by an officer called a wakeman and twelve assistants, who used to take a twentieth part of a bushel from every bushel of grain sold or to be sold brought into the borough, the king made it a corporation by name, &c. and confirmed all customs, and defendant, for a *custom*, took twentieth part of every bushel so'd, *Tho.* 386.

That a market is held in *locus*, &c. for sale of sheep every week in the year, and defendant seised of houses in R. had, and by prescription kept in the houses (*crails*) bars, and there placed them in the time of the market to make sheepfolds for the sheep in the market to be exposed to sale, and in consideration thereof had a reasonable sum for housing the sheep so exposed to sale in the market; defendant placed the bars, which is the trespass; and traverses that he is guilty otherwise or in any other manner, *Tho.* 420.

Plea, not guilty as to the *assault*; as to the goods spoiling, that there is a manor within the leet, and a market in it, and that ale-tasters used to be chosen to weigh the butter there, and if it wanted weight to cut it. That defendant was chosen ale-taster, and cut the butter for want of weight. Demurrer, *Lev. Ent.* 215.

Plea, that trespass was done by processsing (*per perambulationem*) according to *custom* of the parish on rogation days; traverses that he is guilty in the form in the declaration, *Ra. Ent.* 617. *Co. Ent.* 651. *Upp.* 181.

That a gutter between plaintiff's and defendant's house was out of repair, and defendant, according to the *custom* of the borough, removed the tiles of plaintiff's houses to repair it. Demurrer, *Ra. Ent.* 619.

DISTRESSES—CATTLE—DAMAGE FEASANT—RENT.

That the closes and houses were freehold of J. and others, and defendant, as servant, entered to *averia regendum & gubernandum*, and took the horse damage feasant, and led him to pound. Replication by disseisin, and issue thereon, *Ra.* 629.

Plea (to driving a heifer) that defendant is seised of a close, in which he found the heifer damage feasant, and drove it into the adjoining close. Replication, prescribes in right of way, *Her.* 710.

Plea,

Plea, that plaintiff took two cows of defendant without cause, and impounded them in a close, which defendant led away. Replication, *de injuria*, *Ra.* 619. *Vet. Int.* 152. *Wilk.* 286.

Plea (to taking cattle at S.) that defendant is seised of the land in L. in which he took the cattle *damage feasant*; and traverses that he is guilty in S. Issue on the traverse, *Ra.* 630. *Vet. Int.* 160.

Plea (to taking a horse at B.) that D. is seised of the manor, in which defendant, as servant, would have taken the horse *damage feasant*, which plaintiff perceiving, drove the horse to B. where defendant by fresh pursuit took and led him to pound. Replication, *de injuria*, &c. at B. *Ra.* 630. *Vet. Int.* 160.

Plea (to taking cattle at J.) that defendant is seised of twenty acres of land in N. where he saw cattle *damage feasant*, and would have taken and impounded them, but the beasts escaped into the close in J. where defendant, by fresh pursuit, took them. Replication, *de injuria*, &c.; and traverses that cattle were *damage feasant* in the said acres at N. *Ra.* 630. *Vet. Int.* 162.

Plea as to part of the cattle, that he took them as a distress for rent unpaid; to other part, that he took them *damage feasant* in twenty acres of land, and drove and impounded them at W. where the cattle escaped out of the park; and traverses that he is guilty of driving from A. to W. and to other part a licence; demurrer to two first pleas, and to third replication *de injuria*, &c. traversing licence, *Ra.* 630.

TOLL.

Plea (to trespass for taking corn), prescription for a market and for stallage and toll of all grain which should be carried, sold, delivered, or contracted for on any market day; that one J. F. at the time of the trespass, brought to the said vill five quarters of barley, and sold them to plaintiff, for which, &c. they justify, Replication, *de contrariis*, &c.; with traverse, that the five quarters were sold within the market. Demurrer for plaintiff traversed a thing not alledged in the bar; and judgment for plaintiff, for that no place was expressly alledged where the barley was sold, 2. *Lut.* 1408.

Plea, prescription and justification for tolls and custom of all strangers not freemen in the port of Lynn Regis, and to distrain, 2. *Lut.* 1520.

That defendant, lord of the manor, had a fair in a vill yearly, and fourpence for every stall covered there to be erected for toll, and defendant took a piece of linen cloth for toll of the stall unpaid on request. Replication, *de injuria*, and traverses prescription, 1. *Br.* 178. *Br. R.* 479.

That vill of N. is an ancient borough incorporated of bailiffs and burgesses, who were seised of the vill held in fee farm of the king, and had a market there on every Saturday weekly, and toll from the buyer of cattle; and defendants, as bailiffs, took the horse for toll of cattle there bought by plaintiff, and prays in aid of the king, 1. *Br.* 182. *Br. R.* 480.

That mayor and burgesses of T. were seised of a fair and a court of pie powder, together with toll and stallage, and other privileges belonging thereto, erected a stall in the fair, and sold goods; and because the toll was not paid, defendant, as servant of the mayor and burgesses, and by their command, took a piece of leather, &c. Replication, that plaintiff was an inhabitant and tenant of the lands in the vill of A. held in ancient demesne of the crown of England, and that the tenants of the said vill were discharged from payment of toll for goods, and the profits arising out of land in all fairs throughout the kingdom. Rejoinder, maintaining plea, and traverses that the leather was of the profits of plaintiff's lands in the vill of A. held in ancient demesne, and issue, *Tbo.* 302.

That J. lord R. seised of the manor, whereof vill of H. was parcel, had toll for all cattle (*affris*), carts, and carriages passing through the vill at certain rates, and for

non-payment thereof on demand could detain them, plaintiff rode into the vill^g with his gelding laden with six bushels of wheat; and because he refused to pay the toll due, defendant, as bailiff of the manor, took the gelding, *Fboi* 345.

Plea to trespass for taking twenty measures of malt at C. that the corporation of the city of Bristol had a *market* granted to them, and a reasonable toll to be appointed by the mayor, &c. and justifies for a certain toll; and traverses that they are guilty at any other place out of the city. Replication, that he is a burghess of T. and that E. 3. granted to them to be quit of toll throughout the realm. Rejoinder, that the bailiffs, &c. of T. surrendered to Jac. 2. all their liberties, &c. and demurrer and judgment for plaintiff, for that no toll is due by law for goods sold, unless by special custom, 2. *Lut.* 1329.

Plea to taking and chasing two lambs; justification for toll in a fair for six hundred sheep and lambs bought by plaintiff, and that defendants gave him notice, and he refuses to pay it to defendants, servants of J. R. for which he distrains. Replication, privilege of inhabitants of *dutchy of L.* from time whereof, &c. to be quit of tolls of their goods bought or sold, of which he gives defendants notice, &c. Demurrer and judgment for plaintiff, without noticing the exceptions, for that the prescription was good, 2. *Lut.* 1377.

FINES—HERIOT—MORTUARY.

Plea (to taking and carrying away cattle), that H. countess of St. Alban's, and others, were seised in fee by descent of the manor of B. and divers other lands in the said county of N held of the said honour of C. and custom by the lord of the manor to have *fin*es on descent, and *distrain* any goods or chattels for fines unpaid, and justifies for twelvepence for every house, and twelvepence for every acre inclosed, and sixpence for every acre uninclosed within said manor. Replication, no such custom, and concludes to the country. Demurrer. Judgment for plaintiff, because the plea was not well pleaded, 2. *Lut.* 1298.

Plea of custom for a heriot after death; *per quod*, &c. 2. *Lut.* 1310. but the *continua do* was not answered.

That prior, rector of the church had within the parish the best animal or other thing of persons dying for a mortuary, and defendant justifies taking horse and ox for mortuaries of two persons. Replication, that by the custom of the parish the executors or administrators may chuse the first best beast or thing, and prior had the second. Rejoinder, maintains plea, traverses custom alledged by plaintiff, *Upp.* 188.

WAIFS.

That R. stole sheep and led them to W. where he *waived* them, and H. seised of the manor to which he had view of frankpledge and goods *waived* and estray belonging, seized them within the manor there. Replication, that plaintiff made *fresh pursuit*, and retook the sheep out of his custody, and was possessed until the trespass; and traverse that R. waived the sheep, *Ra.* 683.

That dean of the chapter being a sanctuary, had goods *waived* there. Replication that plaintiff delivered the goods to servant to keep, who fled to sanctuary with the goods, where plaintiff demanded them before they were waived, *Ra.* 683. *Vet. Int.* 169.

That J. seised of the honour and barony, had goods *waived* and estray appurtenant thereto, and that H. and others stole the horses, which they let loose and *waived* within the honour, and defendants, as servants, took them, and give colour. Replication, that the said J. and others stole the horses, and plaintiff being bailiff of the hundred, followed and took them and the horses within the hundred; and traverse that H. and others waived the horses, *Ra.* 682. *Vet. Int.* 123.

WRECKS.

That abbot seised of the manor, had all goods wrecked on the coast of the sea from a place certain to another place, and defendant, as his servant, took the casks of wine wrecked. Replication, that the archbishop, in right of the church, had goods wrecked from a certain place, &c.; and traverse the *prescription* alledged by defendant, *Ra.* 684.

That the king, in right of his crown, had all goods wrecked upon the shore within the lordship of L. and defendant, as bailiff, took the goods wrecked. Replication, that the abbot was seised of the manor of L. within the lordship of L. had all goods wrecked by prescription, and traverses the king's right, *Ra.* 684.

Justification under a *custom* for the lord of the manor, for the conservation of the sick, and burying the dead cast on shore, and preservation of the goods, used to have the best anchor and the best cable of every shipwreck. Demurrer, *Lev. Ent.* 214.

CUSTOMS—ESTRAYS.

That B. seised of a manor, had right of *estray by prescription*, and defendant, as his servant, took the horse as an estray within the manor, and made proclamation in the market towns of F. and N. and plaintiff claiming the horse, defendant re-delivered him, 1 *Bro.* 344.

That plaintiff took the filly as an estray within the manor, in which he had *estray by prescription*, and made proclamation in three market towns, and offered to deliver her to plaintiff upon claiming, if plaintiff would make amends for depasturing, which he refused, *Tho.* 420.

That E. seised of the manor of S. had *estray by prescription, and by the custom* of the manor, the tithing man was used to seize cattle within the manor as estray, defendant took the filly, and because she was wild and ungovernable he had her footlocked, and plaintiff claiming her, defendant delivered her. Demurrer, *Bro. R.* 176. 1. *Bro.* 169.

That Car. 2. was seised in fee of the manor of H. in right of his dutchy of L. and by indenture under the dutchy seal granted to J. S. all *estrays* within the manor for thirty-one years, whereby he was possessed of all estrays, &c. which the *executor* of the said J. S. being possessed, &c. the said heifer coming within the said manor; *per quod*, &c. Demurrer general, and exception taken that the indenture under the dutchy seal was not produced, but overruled on demurrer, and judgment for plaintiff, for that the Count was of a cow, and defendant justifies taking of a heifer, 2. *Lut.* 1353.

That defendant took the cow in five acres of pasture, in which defendant has *estray by prescription*. New assignment and not guilty, *Ra.* 579. *Vet. Int.* 154.

That defendant took the cows as *estrays* within the manor in which he had *estray by prescription* and made proclamation in two market vills for two days, and plaintiff did not come to claim within a year and a day. Replication, *de injuria*, and traverses *prescription*.

That defendant, seised of the manor, had view of frankpledge, goods waived, and estray, and took the cattle as estray within the manor, and made proclamation in the market town of A. and in other towns and churches, and that no one claiming within the year and day; and traverse that he took them within the precincts of any other manor, *Upp.* 192.

3. Distress for using Engines, &c. to destroy Game contrary to Law.

VOL.

IX.

Page

364. Plea (to trespass for an assault and taking away a net), that A. B. was seized of the manor of A. and appointed defendant his gamekeeper, and plaintiff *not being qualified molliter manus imposuit* to seize the net.

Plea of justification by entry into the house, and taking a gun of plaintiff by statute 22. & 23. Car. 2. c. 25. for preservation of game, 2. Lut. 1502.

Plea in Excuse and Justification of Trespas to Real and Personal Property, by LICENCE.

1. In Fact (15.)

VOL.

IX.

Page

PRECEDENTS in
BOOKS of PRACTICE,
REPORTERS, &c.

24. Plea to new assignment; 1st, not guilty; 2d, leave and licence. Replication, issue on licence.

114. Plea (to trespass for entering close, &c. p. 113) leave

116. and licence to enter close. Replication, and issue on the licence.

119. Plea (to declaration for entering dwelling-house, &c. p. 118); leave and licence; with other pleas.

176. Plea (to trespass to fishery, and treading down grass, &c. p. 172.), leave and licence; with other pleas. Vide Replication, &c.

264. Plea (to declaration for entering close, spoiling grass, carrying away water, &c.), leave and licence. Se-

268. veral pleas of licence, owing to the several Counts in declaration.

269. 313 Plea (to trespass, entering plaintiff's close, taking the grass, and leading a mare out of the same), leave and licence. Replication, *de injuria*, &c.

375. Plea to entering close, consuming turnips, and with carriages subverting soil, *leave and licence*. (See other very special pleas). Replication, new assignment, &c. from p. 369 to 384, &c.

Plea of justification in trespass for breaking and entering closes of the plaintiff, &c.; that being parishioners legally settled, and being poor and necessitous, *they entered to glean*, &c. It is decided in C. B. this plea cannot be maintained. (See the Report.)

Plea to trespass for digging ditches; licence from plaintiff, and issue,

Plea (to trespass for breaking and entering plaintiff's house and close), *that the house, at the time when, &c. was a common victualling-house, wherefore defendant did enter to drink beer*, as he lawfully might do, the house being open; as to the treading down, &c. satisfaction made,

1. H. Bl. Rep. 51

2. Lill. Ent. 427.

2. Lill. Ent. 439

Plea

- Plea of justification to trespass, for obstructing ancient lights, *a custom in the city of London*, that if a house adjoins another ancient house or foundation, to exalt and build, and obscure the ancient lights of former house, unless there be an agreement to the contrary. Answer of lord mayor *by the recorder*, "no such custom." Vide Report, - 1. Burr. 248
- Plea (to trespass for entering house, and carrying away and converting goods). that goods were taken under a distress for rent arrear; that defendant impounded goods in pound overt, and that plaintiff *licensed* him to sell and satisfy himself. Replication, traverses licence. Rejoinder, and issue, - 2. Ld. Raym. 1372
- Plea that plaintiff seized of lands, demised for years to R. who *licensed* defendant to fish in the water there; and to the assault, *son assault demesne*. Replication to trespass, that he did not demise to the assault, *de injuria*, &c. *Ra.* 655.
- That plaintiff gave licence to defendant for himself and servants to hunt in his *warren*. Replication, issue on the licence, *Ver. Int.* 159. *Ra. Ent.* 650.
- Plea as to *vi et armis*, *non cul.* to residue by licence, *Tbo.* 390.
- Plea as to part, defendant entered the close and house by licence from plaintiff; and to residue, that house was a *common tavern*. Replication to trespass in the house *de injuria*, &c. Like to the residue, and traverses licence, *Tbo.* 391.
- Plea to trespass against two, to part, both plead licence; and to residue, severally plead defect of fences, *Tbo.* 310.
- Plea to breaking close and house, *licence* to assault *son assault demesne*. Replication, did not licence; residue, *de injuria*, &c. and several issues, *Tbo.* 350.
- Plea as to part a *demise*, to residue *licence*. Replication, *de injuria*, &c. traversing licence, *Tbo.* 413.
- Plea as to depasturing with cattle, *non cul.* to residue, pleads licence. Replication, *de injuria*, traversing licence, *Wi. Ent.* 985.
- Non cul.* to the assault on servant, to breaking house defendant pleads licence, and to residue justification, *Cl. Aff.* 144.

2. LICENCE in LAW.

To abate Nuisance.

Enter Taverns.

Take Implements to glean, *Qu.*Take, retake, or demand his
own Goods, Debts, &c.

Tithes.

To prevent Damage.

On other lawful Occasions, cutting Ropes, killing Dogs.

(16.)

To take TITHES—By the Vicar—Impropriator—(Grantee of).

Vol.

IX.

Page

299. Plea (to trespass, for entering close with a waggon, and carrying away hay, by one defendant as *vicar*, and the others as his servants; justifying entering *locus*

with

Vol.

IX.

Page

with a waggon drawn by six horses to take away the tithes of hay, under a custom to take such waggon load in lieu of tithes of hay of ~~the~~, in consideration of plaintiff's making lime into hay according to the custom of the country.

Plea (to entering close and carrying away corn), that the defendants, as servants of the executrix of the grantee of the tithes of locus, entered to take the tithes of corn, viz. the eleventh part instead of the tenth, under a custom, in consideration of the plaintiff's binding same up in sheaves, and managing the harvest. Replication, protesting, &c. traverses custom.

Plea (to trespass, for entering close, subverting soil with carts, and carrying away hay), that Dr. S. is seised of S. and that locus is within the boundary of S. and that the tithes of hay are payable to the prebendary or his lessee; that Dr. S. demised the tithes of hay to one of defendants for three lives, and the survivor of them, whereby W. G. became entitled to the said tithe, the three lives still living, and that plaintiff cut down a quantity of grass, and made same into hay, and put the same into cocks divided, &c.; as for the tithe being severed, defendants, as servants to N. G. entered, &c. Replication, *de injuria*, &c.; and traverses hay being severed.

317.

319.

To abate Nuisance.

173. Plea (to trespass to fishery, breaking rails, &c. p. 172.), that rubbish placed about rails obstructed water flowing through and from mills. Other pleas, vide.
314. Plea (to declaration for sawing a spout leading from plaintiff's corn chamber to his steep vat, for the purpose of conveying grain. p. 314), 1st, general issue; 2d, that defendant seised in fee of a messuage; and because the spout was fixed through the ceiling of the said house, and against the walls incumbering same, defendant pulled it down. Replication, that before the defendant was seised of the said messuage, T. R. was seised of the room in the declaration mentioned, now of plaintiff, and also of the said messuage, and that the spout was fixed through the ceiling of the messuage, and through the walls thereof, and was appurtenant to the said rooms. T. R. bargained and sold the premises, except the messuage, to one W. M. for one year, *prout*, &c. Statute of uses. Release. W. M. devised premises by will to S. P. and T. M. and died, wherefore they became seised, and demised to plaintiff from year to year.
320. Plea 1st, not guilty; 2d, that the goods were on a stage in the king's highway obstructing the same,

where.

Vol.
IX.
Page

wherefore defendants removed the stage and goods to a convenient place, and left same for plaintiff's use.

To demand Debts.

99. Plea (to declaration for entering dwelling-house, &c.), 1st, general issue; 2d, that plaintiff was indebted to defendant in two pounds seven shillings for goods, &c. sold and delivered, and defendant peaceably entered to demand his debt. Replication and new assignment, that defendant entered plaintiff's house at other and different times, and in a greater degree of violence and noise than was necessary, and after request and notice to depart. To 2d plea, *de injuria*, &c. Plea to new assignment, general issue, and similiter. (See Declaration, p. 98.)
- 100.

On other lawful Occasions.

175. Plea (to trespass to plaintiff's fishery, and treading down grass, p. 172), that defendant went to speak to plaintiff in a usual way leading to plaintiff's house, whereby he trod down a little of the grass. With other pleas, vide.
304. Plea (to declaration in trespass, for driving and chasing sheep) of justification, driving sheep, because they were *wrongfully intermixed with the defendant's sheep*. Replication, *right of common*. Rejoinder, protesting no such common, &c. Vide plea of Justification under *Right of Common*, ante.
- 305.
308. Plea (to trespass, for entering a yard, opening a reservoir, and taking away water), that the plaintiff and defendant are jointly possessed of the yard and reservoir for water; and because the reservoir was locked, justifies opening it. Replication, that defendant wrongfully committed the trespasses; and traverses the tenancy in common.
- 309.
- 310.
311. Plea (to trespass, for entering a ship, and breaking open locks, &c.), that the ship belongs to one J. B. and that the defendant by his command, and as the servant of A. B. entered the ship and broke the lock, &c.
312. Plea (to trespass, for entering closes, treading down grass, &c.), that the inhabitants of the parish by custom at their pleasure have *perambulated the parish* to remark its limits, and for that purpose did enter *locus*, &c. Replication, new assignment.
- 323.

Plea (to trespass by the lord against commoners, for digging up coney burrows), a special justification *to abate nuisance*.

Demurrer and joinder. Judgment for plaintiff.

1. Wils. Rep. 51. b.

Plea in bar (to declaration, with a *continuando quare clausa fregerunt coperunt et asportaverunt*, &c. 1st Count, for breaking and entering plaintiff's closes, spoiling grass and corn; and with cattle, &c. and for mowing, cutting, and carrying away the same, and with carts, &c. spoiling the plaintiff's soil. 2d, for mowing and cutting grass and corn of the plaintiff, and carrying it away. 3d, for taking and carrying away grass and corn) 1st, not guilty to the whole declaration. 2d, as to breaking the closes, &c. treading, &c. the grass, and eating, &c. other grass, with cattle and with carts, &c. spoiling, &c. the soil, &c.; that before any of the times when &c. one C. H. was seised in fee of the closes in which, &c. and by indenture demised the same to J. K. for ninety-nine years, if P. K. and M. K. should so long live, to begin immediately after the death of E. M. whereby J. K. became entitled to the said closes expectant on the death of E. M. &c.; that afterwards and before any of the times when &c. the said E. M. died, &c. and J. K. afterwards entered upon the said closes, and was possessed, and the said M. K. afterwards died: And defendants further say, that J. K. afterwards, and before any of the said times when, &c. made his will, and the said P. K. his executor, and died possessed of the said closes, by which P. K. entered and was possessed, and before any of the times when, &c. demised the same to the defendant J. W. for one year, and so from year to year as long as the estate of P. K. should continue; by virtue whereof J. W. entered and was possessed, and during the life of P. K. ploughed and sowed the closes with corn, &c. and before the same was ripe and fit for reaping, P. K. died, whereupon his said demise to J. W. ceased, and he delivered up possession to the plaintiff, to whom the same belonged, and when the corn was ripe, the defendants entered and reaped, &c. and so excuse the trespass by *taking the emblements*. Replication to plea in bar as to part of the trespass, to wit, in Wall Park, and the three pieces, plaintiff confesses that C. H. was seised in fee, and all the rest of the plea until the time of delivering up possession to the plaintiff of the closes in which, &c.; but the plaintiff further says, that in the said lease from C. H. to T. K. it is provided that if the said T. K. should let the premises otherwise than from year to year, and that only to pasture, and not to tillage, it should be lawful for C. H. and his heirs, &c. to re-enter: And the plaintiff further says, that the said C. H. after making the said lease, and before any of the times when, &c. being seised in fee of the reversion, made his will, and devised the same to W. H. in fee, and afterwards died so seised, whereby W. H. became seised, and before the first time when, &c. bargained and sold to the plaintiff by

INDEX TO LEADING TITLES OR HEADS

PRECEDENTS in
BOOKS of PRACTICE,
REPORTERS, &c.

virtue whereof, and the statutes of uses, the plaintiff was possessed of the reversion, and being so possessed, the said W. H. released the premises to the plaintiff in fee by virtue whereof, and the statutes of uses, the plaintiff was seised in fee, and was seised at the time of ending the lease to the said J. K. and that P. K. had no licence from C. H. to let the closes to the defendant J. W. to tillage, so that J. W. wrongfully ploughed, &c. and that defendants of their own wrong did this part of the trespass in the declaration; and this, &c.: And as to the same plea in bar as to breaking, &c. the residue of the said closes, the plaintiff replies and confesses that C. H. was seised in fee and the rest of the plea, until the delivering up possession of the residue of the closes to plaintiff; but further says, that the plaintiff, before and at the end of the said lease for ninety-nine years, and before and at the time of the said defendant J. W.'s quitting possession, was and still is seised in fee, and that defendants, of their own wrong, did the trespass; traverses that P. K. was living at the time when J. W. ploughed the closes, and sowed the same with corn. Rejoinder to the first part of the replication, confesses the proviso in the lease for ninety-nine years, and that C. H. demised the reversion to W. H. and that W. H. bargained, sold, and released the same to the plaintiff, and confesses the first part of the replication; but the defendants further say, that the plaintiff did not re-enter during the term subsisting; and this he is ready to verify, &c.: And as to the other part of the replication, the defendants say, that at the time of ploughing and sowing, P. K. was living, and conclude to the country; and thereupon issue is joined. Demurrer general to the rejoinder, as to the closes called Wall Park and the Three Pieces, and joinder,

2. Wilf. 127 to 139

Plea (to trespass against *baron and feme*, for taking away corn in the straw, and converting to the *husband's* use), as to part not guilty, as to the residue, that plaintiff *licensed* her to take away the corn, &c. Replication, *de injuria*, &c. traversing the licence. Rejoinder, taking issue on the traverse,

2. R. P. C. B. 437

Plea (to trespass, for breaking and entering closes, &c. with horses, dogs, &c.) 1st, not guilty; 2d, that defendant was *retained* as servant to H. S. and justifies *bunting* a fox. Demurrer and joinder,

2. T. R. 334

Plea as to the force, &c. not guilty, and to the residue of the trespass a licence against one of the defendants *to cut under-wood*, and the others justify as his servants. Replication, *de injuria*, &c.

Pl. Aff. 492

Justification to trespass *for killing a mastiff*, that he did, as servant to another, to prevent its *moorring* their dog. 1. Saund. 84.

That plaintiff permitted a mastiff to go about in the streets without his mouth tied up who violently run and bit defendant's dog that he kept as a watch dog; and because defendant could not separate them, *he killed* the other, *Tho.* 336. 1. San. 82.

Plea

Plea to Count for killing a tame deer, that he was possessed of twenty acres of land in R, and a wandering deer coming on the lands, and *not knowing it was tame*, killed the deer. Demurrer, that plea amounts to the general issue, &c. and court inclined that in the Count it ought to be alledged that defendant knew the deer to be tame, but it was ordered to be amended, 2. *Lut.* 1359.

Plea (to killing a mastiff at W.), that he was *fierce, and accustomed to bite men, &c.* and that he entered in his yard at H, so that he dare not go out of his house for fear, &c. and so justifies; traverse that he is guilty out of his yard, *de injuria*, &c. and verdict and judgment for defendant being moved in arrest of judgment, that the justification was bad, 2. *Lut.* 1494.

Plea (to trespass for killing pigs and sheep), that defendant was servant to plaintiff, and by his command killed the sheep and pigs. Replication, *de injuria*, &c. ; and traverses the custom to kill them, *Re.* 663. *Upp.* 202.

Plea (to trespass for killing dogs), that dogs chased the deer in his park or chase, and killed one, on which defendant, as servant of E. T. knight, and by his command to save the deer killed the dogs. Replication, that the deer was out of the chase upon plaintiff's land feeding, and that he called the dogs to hunt them out, and they pursued the deer into the chase and there killed the deer; *absque hoc*, that the dogs drove or killed the deer in any other manner. Demurrer, and judgment for defendant. 3. *Lev.* 25.

Plea, that he did not *scienter* keep dogs accustomed to bite sheep, *Ash.* 15.

TO ABATE NUISANCE.

Plea (to trespass for breaking house, and pulling down chimney), that plaintiff erected a chimney under defendant's wall, which defendant removed with iron instruments. Replication, *de injuria*, &c. ; and traverse that chimney was erected under defendant's wall, and issue, *Tbo.* 368.

Justification to trespass for breaking banks and plaintiff's ditches to preserve his marsh lands upon the flooding of the waters by plaintiff's erecting them, *Bro. Vtd.* 558. Replication, *de injuria*.

That plaintiff and F. were possessed jointly of hay, and plaintiff would carry away all the hay before partition; and defendant, as servant of F. threw the hay *extra placitum* to make partition. Replication, *de injuria*, &c. ; and traverse that plaintiff and F. were jointly possessed, and issue, 1. *Bro.* 341.

TO TAKE TITHES.

Plea that defendant is vicar of the church, and hath tithes of hay within the parish, and defendant took the hay set apart for tithes. Replication, protesting that defendant was not vicar; pleads that hay was not set out for tithes. *Tbo.* 415.

That B. seized of a rectory, had free ingress into the close in the new assignment to carry away tithes; and defendants, as his servants, entered and took the tithes set apart, 2. *Bro.* 271.

That B. was rector of a church, and had all the tithes of grain, &c. and the close in which the grain grew was in plaintiff's possession within the parish; and defendant, as servant of B. entered the close and took the bundles of wheat set apart for tithes. Replication, *de injuria*, &c. and that bundles were not set apart for tithes, 2. *Bro.* 285.

That defendant passed through the close in which, &c. to the close adjoining to carry the tithes. Replication, *de injuria*, &c. *Wi. Ent.* 989.

That S. is *rector* of the church of W. within which, &c. corn grew and were *tithed*, and defendant, as his servant, to K. &c. and *gives colour*, *W. Ent.* 1006.

Plea (to trespass for taking and carrying away tithes), *non cul.* and special verdict and judgment for plaintiff, 2. *Lut.* 1301.

Plea (to trespass, for breaking and entering his close, and for taking and carrying away five cart loads of hay), that one of defendants (being a layman) at the time, &c. was seised of the *tithes* of hay of the said close without shewing how, and that the said five cart loads were tithes set apart, they justify. Replication, *de injuria*, &c.; without this, that the said five cart loads were tithes set apart. Demurrer, with causes. Judgment, that the plea was well pleaded, and the traverse bad, 2. *Lut.* 1314.

That defendant is parson of the church of A. and plaintiff parson of the church of B. the vill of A. adjoining, and the vill of R. is within the parish of B. and that sheaves of corn arising on an acre of land in A. and set apart for *tithes*, which plaintiff claimed and took as portion of tithes, and carried to R. where defendant found and took them. Replication, that the sheaves of corn belonged to him as parson of the church of R.; and traverses that the land is within the parish of A. *Ra.* 634.

That defendant was parson of the church of F. and *leaves*, &c. the hay grew was plaintiff's freehold within the same parish, and defendant and his predecessors had tithes of hay therefrom, and defendant took the hay set apart for tithes. Replication, *de injuria*, &c. and traverse that the hay was set apart for tithes, *Ra.* 635.

That corn grew on demesne lands of the manor within the parish of N. whereof defendant is parson, who took the corn set apart for *tithes*. Replication, that the land in which, &c. is within the parish of J. whereof the abbot was parson, who demised rectory to plaintiff for years, and traverse that land is within the parish of N. *Ra.* 635. *Vet. Int.* 214.

That the king, being seised of the advowson of a chapel in right of the crown, granted it to defendant, and that all who had the chapel had tithes of forty acres of land in which, &c. whereof defendant took corn set apart for tithes. Replication, that the king, seised of the manor and advowson in right of the duchy of Lancaster, granted them to plaintiff. Rejoinder, that the king was seised of the advowson in right of his crown, and traverses that the avowry belongs to the manor, *Ra.* 636. *Vet. Int.* 152.

Plea (to breaking close and carrying away wood), that he took the wood set apart for *tithes* to the use of the rector. Replication, that the wood grew up timber trees (*grossis arboribus*), and so not titheable by the statute, 3. *Br.* 453.

That defendant passed through the close in the new assignment to an adjoining close to carry away *tithes*, *Her.* 709.

That defendant, proprietor of the rectory, entered the close to make the heaps of grass into hay, and to carry it away, *Her.* 726.

That defendant is parson of the church of H. within which corn grew, and were *tithed*, and that plaintiff claimed annexed to another church, and that the question belongs to the ecclesiastical court. Demurrer, and judgment for defendant, *Ra.* 636.

LICENCE IN FACT:

That plaintiff gave defendant *licence* to enter close and house to do divers things. Replication, *de injuria*, and traverse of licence, 1. *Bro.* 353.

Licence to enter and play with tables, *Cl. Aff.* 88.

Licence by plaintiff to walk round and drive all his cattle by and through the several closes to do his affairs, *Tbo.* 337.

- Licence by plaintiff to enter his close to chase sheep out of his close. Replication, traverses licence, and issue, *Tbo.* 356.
- Licence to enter close to draw cart with barley, in, by, and through plaintiff's close to defendant's house. Replication, *de injuria*; and traverse licence, *Tbo.* 365.
- That A. seised of third part of the close in which, &c. licensed defendant to put cattle into the close to depasture the grafs. *Tbo.* 387. *Her.* 733.
- Plea, not guilty to the new assignment for part, to the residue, that plaintiff licensed defendant to enter into tenements in the new assignment. Replication, maintaining trespass, and traverses licence, 2. *Bro.* 259.
- Licence by plaintiff to enter into the close, and to put hay in his barn. Replication, issue on the licence, 2. *Bro.* 283.
- Licence to defendant to enter with carts and horses into the close, *Tbo.* 296. Replication, *de injuria*, &c.; and traverses licence, *Raff.* 661.
- That defendant seised of a pool near the close in the new assignment, he and all whose estate, &c. were accustomed to turn all water-courses running to the pool as often as they fished there; and because defendant and his servants could not turn the course of the water by the ancient way for the violence of the water, plaintiff licensed them to enter the close, and to dig passages in it for better turning of the water-course, plaintiff assisting them, *Tbo.* 323.
- Licence to part, *son assault demesne* to residue. Replication and several issues, *Tbo.* 349. Like to part inclosing with hedges to residue, *Ro. Ent.* 465.
- Licence by plaintiff to defendant and servants to chase in the house, and to repair the walls of the house broken down, *Tbo.* 406. To repair timbers, erecting *scalas* in the close, *Raff.* 660.
- Licence by plaintiff for three days to enter his house; and traverses being guilty at any time before or after such licence. Replication, *de injuria*, &c.; and traverses licence; issue on the traverse, *Bro. Vad.* 408. *Ra. Ent.* 660. *Upp.* 204.
- Licence by plaintiff to take and impound cattle wherever and however he chose. Replication, *de injuria*, &c. *Raff.* 630.
- That plaintiff gave licence to defendant to fish with a pike, (*cum lancia*) in the fishery to take salmon. Replication, no licence, *Ra.* 665. *Vet. Int.* 157.
- Licence by plaintiff to defendant and servants to chase in a warren, and to take hares, and defendant, as his servant, chased and took the hares. Like replication, *Ra.* 659. *Vet. Int.* 159.
- Licence and agreement by plaintiff to one D. to have a kid in the park to be delivered by the park-keeper. Replication, *de injuria*, &c. *Ra.* 651.
- Plea (to trespass for breaking house and carrying away timber), that J. being seised of messuage with divers houses built, gave defendant the timber, and licence to break the houses and take the timber. Replication, that W. seised of the messuage with divers, &c. gave plaintiff the timber, and afterwards W. re-entered and seized the timber, &c. Rejoinder, maintaining the plea; and traverse seisin of W. in fee, *Vet. Int.* 22.
- Licence from plaintiff to defendant to go through part of the lands in the new assignment from his houses to the church, and afterwards on such a day prohibited him; and traverse that he is guilty. Replication, protesting that he did not licence, pleads that defendant is guilty, 3. *Br.* 442.
- Plea (to trespass for chasing and impounding horses), that *locus*, &c. is the freehold of M. and defendant, as his servant, and by his command took, &c. *damage feasant*. Replication, that M. gave licence to plaintiff to put his horses into *locus*, &c.; and traverses that defendant, as servant of M. and by his command, took the horses, 3. *Br.* 450.
- Plea (to trespass for breaking house and carrying away money), that defendant sold plaintiff the lands, and plaintiff requested defendant to enter into the house to receive money. Replication, *de injuria*, &c.; and traverses the request, *Ra.* 619.

Plea that plaintiff commanded his servant to take the cattle to agin, took defendant's sheep. Replication, *de injuria*, *Ra.* 605.

That plaintiff demised to defendant the *pasture* for all his cattle in *loam*, &c. for a certain time. Replication, did not demise, *Ra.* 655. *Vet. Int.* 123.

That plaintiff, for a sum of money, sold defendant all the wood and all the oaks in the lands in the new assignment, and *licensed* defendant and his servants to enter into lands to *cut and carry away* wood and oaks thereon growing for five years. Replication, *de injuria*, &c.; and traverse licence; issue, *Ra.* 467.

LICENCE IN LAW.

That plaintiff gave trees to churchwardens in satisfaction of money bequeathed towards the repair of the church, and defendant, as his servant, cut them. Replication, *de injuria*, &c. and traverses the gift, *Ra.* 637. *Vet. Int.* 158.

Plea, that property in the steer was in one defendant, who put it to depasture to R. and plaintiff took him out of his possession, and one defendant in *his own right*, and the other as his servant, *took it out* of plaintiff's possession. Replication, *de injuria*, &c. and traverses the property of the steer being in one defendant, *Ra.* 614.

Plea (to trespass for striking, working, and fatiguing a gelding), that defendant was servant to plaintiff in husbandry, and in ploughing the lands whipped the gelding, as he did others, to make him work his proportion. Replication, protesting, &c. *de injuria*, &c. 3. *Br.* 424.

That the house was a *common tavern*, *Ra.* Ent. 605. 8. Co. 146. *Tbo.* 306. *Cl. Aff.* 91. 97. 2. *Mo. Int.* 314. Replication; and special demurrer, *Wi.* Ent. 983. That the house is a *common inn*, to part, *Ibid.* 973, 974. Replication, *de injuria*, &c. Like plea, and special replication, maintaining plea. Rejoinder, traversing damages alledged. Issue on the traverse, *Vad.* 437.

Plea, that defendant's daughter inhabited with plaintiff, and that he came to speak to her, as he lawfully might do, over the close to plaintiff's house, *Tbo.* 337.

That plaintiff's wife laboured with child, and in danger, and defendant, as a neighbour, came to give her assistance, *Tbo.* 409.

Plea to *vi et armis*, and to all the trespass except breaking the house, *non cul*; to residue, that it is a *common inn*. Replication, *de injuria*, &c. *Tbo.* 973. *Ra.* Ent. 605. As to the assault, *san assauli demesne*. Replication, *de injuria* to the whole.

Plea, as to part, *non cul*; to residue, that it is a *common inn*, in which defendant entered, and asked for a cup of ale, which he took to show up the constable of G. and to complain of the smallness of the cup. Replication, *de injuria*, &c. *Wi.* Ent. 974.

TO TAKE OWN GOODS—PROPERTY IN.

That plaintiff sold fifty cart loads of bricks to one V. to be taken out of the close, and defendant, by command of V. entered into the close and *took ten cart loads of bricks*, *Tbo.* 308.

That plaintiff, possessed of goods by indenture of bargain, &c. sold them to defendant on condition, which is broken; *per quod* defendant in his own right, and others as servants, peaceably entered and *took the goods*. Replication, protesting, &c.; for plea, *de injuria*, &c.; and traverse that they entered peaceably, and issue, *Tbo.* 339.

That

IN THE CIVIL DIVISION.

That *locus* called B. *in quo*, &c. was copyhold land, and granted to defendant in fee, and that the hay growing there was *defendant's* hay, and delivered to plaintiff by defendant to keep safely. Replication, that the grass of which the hay was made was growing in a place called M. and was plaintiff's grass, and traverses that the grass was growing in the place called B. and issue thereon, *J. Bro.* 322.

That defendant was possessed of goods, and gives colour, &c. Replication, that plaintiff was possessed of the goods; and traverses the property in defendant, *Ra.* 632.

That prior was possessed of a silver cup, &c. Like replication, *Ra.* 614.

Plea (to breaking house) and carrying away wood), that defendant was possessed of the wood, &c. Replication, that the wood grew on plaintiff's land, and traverses property of the wood to be in defendant, *Ra.* 620. *Vet. Int.* 190.

Plea (to breaking house) and carrying away hay) that the hay grew upon defendant's land, who permitted it to remain there until W. took it and gave it to plaintiff, who put it into a barn, &c. Replication, that J. seised of the manor whereof, &c. gave it to plaintiff in tail, who was seised until defendant disfeised him. Rejoinder, that he did not disfeise, *Ra.* 620. *Vet. Int.* 189.

That the property of the cattle and goods was in one J. who delivered them to be kept to M. plaintiff's bondswoman, out of whose possession plaintiff took them; Replication, that the property thereof was in said M. and traverses that the property was in J. *Ra.* 637.

That the wool was as well the wool of plaintiff as of M. who delivered it to defendant to be kept. Replication, that wool belonged to plaintiff alone, and defendant took it *de injuria*, &c. Rejoinder, that it belonged to plaintiff as well as to M. *Ra.* 653. *Vet. Int.* 122.

That the property of goods was in plaintiff and H. who gave part thereof to defendant. Replication, *de injuria*, and traverses that H. had not any thing in the goods, *Ra.* 653.

That J. possessed of goods, lent them to plaintiff for a month, and after the month ended defendant, as servant, took the goods out of possession of plaintiff. Replication, that property of the goods at the time of the trespass was in plaintiff, and traverses that property was in J. *Ra.* 606.

BY SALE OF GOODS.

That plaintiff sold goods to defendant, *per quod* defendant took them. Replication, issue on the sale, *Ra.* 675.

That plaintiff, by servant, sold cattle to defendant, who led them away. Replication, *de injuria*, and traverses sale, *Ra.* 675.

That J. possessed of goods, sold them to defendant in his shop in London, and traverses that he is guilty in the county of E. *Ra.* 676.

That B. possessed of a horse, sold him to defendant in market overt. Replication, that T. possessed of the horse, sold him to plaintiff, and traverses that B. sold him to defendant, *Ra.* 675. *Upp.* 193. *Vet. Int.* 100.

TO TAKE OWN GOODS—SALE—POSSESSION.

That property of the horse was in defendant until he was taken by persons unknown, and afterwards came to plaintiff's hands, out of whose possession defendant took it. Replication, that plaintiff bought the horse in market overt, and paid toll for the same to the bailiff of the town. Rejoinder, maintaining plea, and traverses that he bought the horse in market, and paid toll, *Upp.* 151.

INDEX TO LEADING TITLES OR HEADS

BY GIFT OF GOODS.

- Plea*, that plaintiff gave wine to defendant, *per quod* he took it. Replication, *de injuria*, and traverses the gift, *Ra. 636. Vet. Int. 158.*
- That plaintiff gave goods to A. who took defendant to husband. Replication, that plaintiff in contemplation of marriage (*marrimonio praelocuto*), and by fair words, &c. gave goods to the said A. she afterwards falling out with plaintiff, returned the goods to plaintiff. Rejoinder, that he did not return the goods, *Ra. 636. Upp. 199.*
- That J. seised of messuages with divers houses built, gave timber to defendant. Replication, that W. seised of the said messuage gave timber to C. who gave it to plaintiff, and W. being seised of the houses until J. disseised him, who re-entered. Rejoinder, maintaining plea, and traverses that W. was seised in fee, *Ra. 637. Vet. Int. 122.*

BY DELIVERY OF GOODS.

- Plea* (to breaking chest and carrying forty pounds, against A. and B.), *non. cul.* by A. *non. cul.* as to all except fourteen pounds by B. and to that plaintiff delivered to B. the fourteen pounds to be paid to the said A. to whom B. paid it. Replication, that plaintiff did not deliver the money to him, *Ra. 614.*

GOODS PLEDGED.

- That plaintiff, by his wife, pledged goods to defendant for money lent him by defendant. Replication, *de injuria, Upp. 191.*
- That R. possessed of goods, pledged them to defendant for twenty pounds, on condition that they should be re-delivered if money were paid before a certain day, and plaintiff pledged them to G. for twenty pounds, who delivered them to defendant to keep safely, and defendant took them out of the chest and delivered to the said G. Replication, that R. pledged goods to plaintiff for twenty pounds, on condition that if he did not pay the money before the day, goods were to remain to plaintiff as sold, and R. did not pay the money, and defendant *de injuria*, &c. and traverses plaintiff's pledging the goods to G. *Ra. 667. Vet. Int. 161. Upp. 200.*

GOODS FOUND.

- That defendant found goods in the highway, and made proclamation thereof, *Ra. 174.*

AS EXECUTORS, &c.

- That S. possessed of a chest, gave it to defendant. Replication, that S. died intestate and possessed of chest, and administration was granted to plaintiff, who was possessed until the trespass, and traverses that S. gave chest to defendant, *Ra. 637. Vet. Int. 199.*
- That A. formerly plaintiff's husband, was possessed of one hundred pounds, which he delivered to plaintiff to be kept, and afterwards made defendant executor, Who

who entered into the house to bury him, and there took the one hundred pounds found, Replication, that A. devised to plaintiff all his goods after funeral expences and debts paid, and plaintiff delivered the said one hundred pounds according to the will. Rejoinder, mentioning the plea, and traverses delivery. *Ra. 640. Vet. Int. 44.*

Plea as to breaking the house, that M. seised of the manor, took R. to husband, who made defendant *executor*, and died possessed of a bed, and defendant, finding the keys in the doors, entered the house, and took the bed; and as to taking the goods, that said R. died thereof possessed. Replication, that defendant, as executor possessed of the goods, gave them to plaintiff. Rejoinder, that he did not give, *Ra. 640.*

RESPECTING DEEDS AND WRITINGS.

Plea, that in the term aforesaid, in which, &c. the plaintiff delivered the *indenture* to the defendant to be cancelled, whereupon he cancelled it with the plaintiff's consent, *Bro. Vad. 407.* Replication, *de injuria*, &c. *Ibid. 408.*

Plea, protesting that plaintiff delivered defendant's *writing* to be delivered to M. says, that he is not guilty of the tearing, *Vet. Int. 20.*

Plea, *non cul.* to the tearing, and traverses that he was bound to plaintiff in any such sum of money, *Bro. Met. 384.*

That defendant's father being seised of the manor, gave it to defendant and wife in tail, and a box with the *deeds* of the estate. Replication, that the father gave it to plaintiff, and traverses the gift to defendant, *Ra. 84.*

Plea, that plaintiff did not give the *deed* to defendant to be examined. Demurrer, *Vet. Int. 163.*

Plea of Justification to Trespass to Real and Personal Property.

9, By AUTHORITY OF LAW, and } (17.)
UNDER LEGAL PROCESS. }

Commission of Bankruptcy, &c.

(See Without Process, and Under Legal Process, Civil and Criminal throughout, *post.*)

VOL.

IX.

Page

354. Replication to plea in trespass, that he seised *under a commission of bankruptcy* issued against plaintiff, admits issuing of commission, and that such proceedings as in plea mentioned were had thereon, and the making of the indenture mentioned in plea; for replication, that commission was superseded, and as to residue of cause in plea mentioned, *de injuria*, &c.
355. Demurrer. Joinder, and *cur. ad vult.*

GAMEKEEPER—OFFICERS—COMMANDER IN CHIEF—CAPTAIN OF MILITIA.

Vol.

IX.

Page

7. Plea to declaration for assaulting plaintiff and taking away his gun, that sir T. H. seised of the manor of S. nominated defendant his gamekeeper, and that he took the gun from plaintiff, being unqualified to kill game, using the gun on the manor. Replication, *de injuria sua propria absque tali causa*.
2. Postea for plaintiff. (See Declaration, ante, p. 1.)
3. 66. Plea to declaration for shooting a hare, that one A. B. is *bow bearer* of the forest of W. *inter alias*, and that defendant is *his deputy*, and that at the said time when, &c. the dogs mentioned in the declaration were chasing a beast of the forest called a hare, wherefore he shot them. Replication, 1st, not guilty, and issue. 2d, protesting as to sufficiency; protesting also that the king at the time of the grant was not seised, &c. and that defendant was not *gamekeeper*; sets out and *deduces a title*, very special. Demurrer, with causes. (See Declaration, p. 65.)
30. Plea to declaration for destroying booth and seizing goods, that the king's forces were encamped, that plaintiff kept a disorderly sutling booth for reception of lewd women and men, they became riotous, and defendant, by order of *commanding officer*, pulled
83. 84. it down. Replication, *de injuria*, &c. (See declaration, p. 79.)
120. Plea of justification, for that defendant was captain of militia, and the plaintiff liable to serve, refused so to do, being disaffected to government.

2. Under Legal Process,

FIERI FACIAS—TESTATUM FIERI FACIAS—LATITAT—MAGISTRATES PUTTING DEFENDANT INTO POSSESSION OF VACANT HOUSE.

Vol.

IX.

Page

22. Plea (to declaration for entering dwelling-house, beating and seizing plaintiff), that defendant obtained a judgment, and that *goods were taken in execution*, and that as little noise as possible was made, &c. New assignment, trespasses committed on another day.
23. Plea to new assignment, 1st, not guilty. 2d, leave and licence. Replication, and issue. (See Declaration, p. 21.)
44. 87. Plea to declaration for taking plaintiff's goods in execution. 1st, not guilty. 2d, that defendant is a

Vol.
IX.
Page

- sheriff's officer, and seized the goods under a warrant grounded on a testatum fieri facias to Chester.*
89. Replication, writ, without a judgment to warrant
91. it, and new assignment. Plea to new assignment,
93. setting forth the record and proceedings. Replication to plea to new assignment, (*See Declaration, p. 87. and new assignment, post.*)
118. Plea (to declaration for entering dwelling-house,
126. &c. p. 116.) 1st, general issue. 2d, *liberum tenementum*, 3d, leave and licence. 4th, as to entering house and taking goods, &c. one of defendants recovered judgment against plaintiff in B. R. and *feri facias* was sued out thereon, delivered to sheriff, and
22. warrant thereon delivered to bailiff. Replication, issue on *liberum tenementum*. To 3d plea, issue; to 4th, new assignment.
324. Plea (to trespass for breaking and entering dwelling-house, &c.) 2d, that A. B. being seised of the premises, demised the same to plaintiff under a yearly rent, and rent being due, and plaintiff having deserted the premises, so that no distress could be made, A. B. made complaint to two justices of the peace, who thereupon viewed the premises, and did then and there affix on the premises a notice that they would make a second view on a certain day, which they did, and plaintiff not appearing to pay the rent, and there being nothing to distrain, the justices put A. B. into possession, whereupon defendant, as servant of A. B. entered. 4th, and under demise for seven years giving colour. Replication, as to breaking, *de injuria*, &c. To 3d plea, that there was not a year's rent due, and *de injuria*, &c. To 4th plea, tenant at will, and *de injuria*, &c. Rejoinder, that A. B. did not demise. Rejoinder to 2d, that demise to plaintiff being ended, A. B. demised the premises to defendant. Surrejoinder, that A. B. did not demise the premises to defendant, and that the demise to plaintiff was not ended, and issue.
334. Plea to assault and false imprisonment, that defendant
336. took and detained plaintiff by virtue of a warrant grounded on a *latitas* out of B. R.

FIERI FACIAS—CAPIAS AD SATISFACIENDUM OUT OF B. R.—CAPIAS AD RESPONDENDUM OUT OF C. B.

Vol.
IX.
Page

53. Plea to declaration for entering house, that one defendant, and the other in aid, entered to levy under a writ of

INDEX TO LEADING TITLES OR HEADS

101. *fieri facias* on a judgment recovered in assumpsit.
 Replication. Rejoinder.
102. Plea (to trespass for assaulting and imprisoning plaintiff), that defendant having obtained judgment in a suit against plaintiff, sued out *capias ad satisfaciendum*, upon which plaintiff was arrested, which is the supposed assault.
103. Plea, that *capias ad respondendum* issued out of C. B. directed to the sheriff of Surry, that sheriff made out his warrant to defendant as bailiff, and therefore he entered.
104. That one defendant as *bailiff* of mayor, &c. of London of their manor of S. and others in their aid, took plaintiff's goods by virtue of a warrant from the constable of the manor, to levy a fine of one hundred shillings imposed upon plaintiff for contempt in refusing to be a scavenger, 1. *Bro.* 346.
105. (to the entry into the house and taking the goods), a recovery in the borough court of R. and a precept of *fieri facias*, and another judgment in the same court on a *non prosequi* against plaintiff, and a precept of *levari facias* to the serjeant at mace directed, *per quod* the one as serjeant, and the other in aid, entered the doors, being open, and made execution. Replication, that at the time of the entry the doors were locked, and traverses that they were open. Rejoinder, that the doors were open, and issue, *Lev. Ent.* 176. Verdict for plaintiff, and judgment stayed for uncertainty of one parcel, &c. 2. *Lev.* 195.
106. Justification as *serjeant at mace* of the city of W. taking a piece of cloth by virtue of a precept from a court of record there, to make execution by *fieri facias*, &c.; to the residue pleads a recovery in the said court for forty pounds, at the suit of one of the defendants, &c. Replication, *de injuriis*, and traverses the record. Rejoinder, that there is such a record, *Lev. Ent.* 196. 2. *Lev.* 243.
107. Justification taking sheep and lambs in execution for debt on a recovery before the sheriff in the county court by justices, *Lev. Ent.* 212.
108. (to trespass until payment of a fine), a suit in county court against plaintiff and others in replevin; summons, appearance, and cognizance as bailiffs of earl of A. and plea of freehold, and further process in the county court, issue and verdict against the now plaintiff, and *levari facias* awarded to the bailiff, *per quod*, &c. Demurrer and judgment for plaintiff. Judgment in the county court being void after plea of freehold, 3. *Lev.* 194.
109. (to trespass for taking of a gelding and a cow), justification by *fieri facias* on a judgment in the county court, and judgment for plaintiff; 1st, for that the names of the suitors, &c. were not expressed; 2d, no plaint entered; 3d, the recovery is pleaded against the husband only when the action was against the husband and wife, 1. *Lut.* 1531.
110. Declaration for taking of goods, justification by a *levari facias* out of the county court. Demurrer, 2. *Lut.* 1369.
111. (to trespass against J. and P.), that W. took cattle of J. who complained to the sheriff of the county, he made his warrant to said P. his bailiff to replevy the cattle, who entered by the doors of the house into the close, and delivered the cattle to the said J. and traverse that he is guilty before the day, *Ra.* 659. *Per. Tit.* 163.
112. That J. affirmed his *plaint* against plaintiff for taking his cattle, warrant of replevin. Return cattle eloigned; warrant of *capias in quiburnam* to defendant who took the

IN THE CIVIL DIVISION.

- the cattle. Replication, *de injuria*, and traverses warrant of taking cattle in *withernam*, *Ra.* 683. *Vet. Int.* 159.
- Plea (to trespass for breaking close and taking a cow), against two, by one attaching man, the other as servant of the owner of the cow, by warrant of replevin. Replication, *de injuria*, 3. *Br.* 423.
- Plea by *bailiff of a manor* under a precept of *levari facias* by the steward, to levy the pound^s forfeited to the lord by the plaintiff, for receiving inmates into his cottage, *Co. Ent.* 665.
- Plea (to trespass for taking goods), act of parliament of H. 7. against the adherents of R. 3. *Ra.* 665. *Vet. Int.* 185.
- That defendant recovered lands in the manor court by writ of right close, in the nature of a writ of assize of novel disseisin, and upon seisin obtained took goods there damage feasant. Replication, *de injuria*, &c. and traverses the recovery. 1. *Br.* 183.
- Plea by two, not guilty as to entering the house. Justification by an *habere facias possessionem* on a judgment in ejectment, and traverse that they are guilty before the delivery or after the return of the warrant; and to taking and carrying of the goods, they plead a plaint levied in the Poultry Counter against the plaintiff, and process thereon, and an attachment of the goods of the plaintiff in the hands of C. M. with an appraisement, and judgment, and traverse that they are guilty before or after *vel alio modo*. Demurrer, *Let. Ent.* 181.
- Plea (to taking and carrying away a gelding and mare), to all except the taking and carrying away not guilty, and to those justification by sheriff's warrant in three several judgments in the county court. Demurrer, and judgment for plaintiff after several objections, 2. *Lut.* 1410.
- Plea (to declaration for taking and detaining cattle till he paid ten pounds seventeen shillings), not guilty by one; justification by other defendants, taking by virtue of the three several levies on three several judgments in the hundred court, at the suit of one of defendants; and others for the detainer until, &c. and plead that the bailiff being one of the defendants, at the request of the other, took the cattle, and detained for default of purchasers, till plaintiff had paid ten pounds seventeen shillings, *viz.* ten pounds ten shillings and ninepence for the damages recovered, and six shillings and threepence for the necessary charges to keep the cattle. Demurrer; and the court agreed that six shillings and threepence was reasonable, &c. 2. *Lut.* 1439.
- Plea (to trespass for breaking house at Norwich, and taking and carrying away goods, and detaining them), *non cul.* to part; justification to residue, on another day than in the declaration, by an attachment for goods, on *plaint of debt* for forty pounds, levied in the court held before the sheriff of Norwich, &c.; that plaintiff appeared at the return of the precept, and goods were delivered to him; averment that they are the same, traversing guilty in any other manner. Demurrer. Judgment for plaintiff, and traverse (as merely surplusage) being had especially shewn for cause "does not extend to the time," 2. *Lut.* 1452.
- Plea (to declaration against two for taking a horse), *nil dicit* by one; justification by the other under an attachment of goods to answer out of an inferior court, created by letters patent. Demurrer, and judgment for plaintiff; for that by the letters patent all process is to be directed to the serjeant at mace, and executed by him, and the attachment was directed to him and the other defendant C. and executed by C. 2. *Lut.* 1461.
- Plea (to declaration for taking and carrying away a mare) of justification by *levari* on a judgment in a court baron. Demurrer, and objected that it was not alleged before what persons the court was held, or that it was held in the said county, and judgment for plaintiff, 2. *Lut.* 1524.
- Plea, that defendant took the cow and heifer by *levari facias* on a judgment in the hundred

INDEX TO LEADING TITLES OR HEADS

- Warrant* against the suit of A. and a person who claimed property in the cow had delivery by assent of plaintiff, and defendant sold the heifer, and delivered the money to plaintiff. Replication, *de injuria*, 1. Bro. 338.
- Justification by *bailiff* of a manor of taking away the goods by *precept* issuing out of a court of record, *Ybo.* 331.
- Like justification under a *levari facias*, by the steward to levy money on a judgment in the hundred court, *Ybo.* 333.
- Like by precept in nature of a *feri facias* on a judgment in the hundred court, *Wi. Ent.* 994.
- That plaintiff took the cattle of J. who complained to the sheriff of the county, who made a warrant to the bailiff to replevy the cattle, who broke a piece of the hedge off the close, and by the way drove the cattle to deliver to him, *Wi. Ent.* 378.
- Plea (to taking cattle), by warrant to replevy made to defendant by sheriff. Replication, that plaintiff at the time of the taking claimed property. Rejoinder, that plaintiff claimed property in other cattle in the writ, *Bro. R.* 476. 1. *Br.* 169.
- Plea by defendant T. that the defendant P. was possessed of heifers and one calf, and plaintiff unjustly took them out of his possession, on which P. made a complaint, who made a warrant to defendant to replevy, &c. and that he entered in the said close and chased the said heifers, being between other beasts in the said close, &c. Demurrer, 2. *Lut.* 1372.
- Justification under a warrant out of the court of the bishop roffen. directed to defendant to arrest plaintiff, *Bro. Pad.* 485.
- Plea by under sheriff, for levying expences of knights in parliament, *Ra.* 664. *Vet. Int.* 158.
- Plea by abbot (to taking cattle), that he took the cattle for money unpaid assessed upon the abbey, and the fifteenth granted by parliament. Replication, that he paid the money taxed by the clergy of the province of Canterbury by prescription, and traverse that the lands were given after 26. E. 3. *Ra.* 670.
- Justification, taking cattle for two shillings unpaid by plaintiff for money taxed on the fifteenth granted by parliament. Replication, that he paid the money before the trespass committed, *Ra.* 671. *Vet. Int.* 173. 242.
- Like justification of eleven shillings assessed on abbey for lands. Replication, that he was taxed with the clergy for the whole manor, whereof, &c. Rejoinder, that abbot is rector of the church, and had glebe for which he was taxed with the clergy. Demurrer, *Ra.* 671. *Vet. Int.* 173.
- That he took a cow on a *levari facias* on a judgment in the hundred court. Replication, and *trial* recovery, 1. *Br.* 168. *Her.* 719.
- That S. levied a plaint against plaintiff in the hundred court in debt, summons, declaration, wager of law, default, judgment for plaintiff, and *feri facias* executed. Replication, no such recovery, *Ra.* 669. *Vet. Int.* 166.
- That as to one cow J. affirmed his plaint in debt in the hundred court, summons, and attachment awarded, and cow taken by *bailiff* of the hundred; to the other cow and horses, that plaintiff held lands by doing suit to the hundred on notice, and defendant took them for *not doing suit*. Replication to 1st plea, *de injuria*, &c.; to 2d, that defendant milked the cow, and worked the horses, *Ra.* 668. *Vet. Int.* 156.
- Plea, that the king, seized of the manor, had a court baron, and demised the custody of the manor and agistment of the park for years, and J. affirmed the plaint in trespass against plaintiff, whom defendant, being bailiff, attached by horses thereupon. Replication, *de injuria*, *Ra.* 667. *Upp.* 227.
- That J. affirmed his plaint against plaintiff in the manor court for taking cattle, process continued to *disfringas*, and goods thereupon distrained by bailiff, and tenants of the manor came to his aid. Replication, *de injuria*, *Ra.* 668. *Vet. Int.* 174.

IN THE CIVIL DIVISION

That defendant was shooting with a long bow at marks; and plaintiff came suddenly near the marks, and there against the will of defendant was wounded in the feet with an arrow, 12 Br. 188.

That he *did not knowingly keep* dogs accustomed to bite sheep, *W. E. 100* 4th. 15.

Plea to trespass for taking and immoderately riding and working a gelding, the bailiffs of the city by command of the king's privy council to apprehend traitors, sent defendant with the gelding to conduct the king's messengers on their way to London, to give notice of their apprehension. Replication, *de injuria*, 623. 3. Br. 452.

Replication to plea, that R. pledged goods to plaintiff for twenty pounds, on condition that if he did not pay twenty pounds before a certain feast-day goods should remain to plaintiff as goods sold; R. did not pay, and defendant *de injuria*, &c. and traverse that plaintiff pledged to defendant, *Pl. Gen.* 603.

Amicable Contest. *Q. n.* (18.)

Plea to destroying the grafts mutual discharges. To assault, it was *agreed to surse* for ten shillings, and defendant *molliter manus imposuit* in wrestling, 2. Br. 145.

1. Without Procefs. (19).

1. As Individuals.

2. Officers, and in Aid of them.

VOL.

IX.

Page

27. Plea as to imprisoning plaintiff, that he was making a great noise, and that defendant, for the preservation of the peace, charged a constable with plaintiff, that he might be carried before a justice of the peace, and because it was Sunday necessarily was detained. And as to assault, defendants, *in aid* of the constable, *molliter manus imposuerunt*. (*See Declaration and Pleadings*, p. 21, &c.)

331. Plea, that plaintiff had feloniously stolen some feathers, part of some goods distrained by defendant for rent, and being late at night he carried her to the watch-house till morning, when she was carried before a justice, who discharged her. 2d plea, omitting the distress.

331. Plea of justification to trespass and false imprisonment, that defendant's horse had been stolen out of his stable, and suspecting plaintiff to be the thief, charged the constable with him to take him before a justice.

339. Plea to trespass, assault, and imprisonment. 1st, not guilty. 2d, justification taking plaintiff before a justice of peace on suspicion of felony.

340. Plea, 1st, not guilty. 2d, as to beating plaintiff, that

defendant

INDEX TO LEADING TITLES OR HEADS

Vol.
XI.
Page

- defendant is the *porter of New Inn*, and appointed to take care of the gates, and to prevent noise; plaintiff was making a noise in the night, wherefore defendant charged the watch with him, who kept him some time, and then dismissed. 3d, *molliter manus imposuit* to preserve peace. 4th, in defence of *self*. 5th, to tearing clothes, *son assault demesne*. 6th, to assault only, *son assault demesne*.
 342. Replication, *de injuria*, &c. and issue on all the pleas.
 344. Plea (to assault and imprisonment), that defendant was possessed of a house, and that plaintiff in the night time was making a noise at the door, wherefore the defendant charged the watchman with him. Another plea for making a noise in the street.
 345.

Justices of Peace.—Goalers:

5. Plea (to declaration for assault, battery, wounding, imprisoning, &c.) 1st, not guilty. 2d, that plaintiff was committed by the judge of assize *to the house of correction*, whereof defendant was *keeper*, to be imprisoned for a year; that he was mutinous, and justifies all the trespasss but the maiming; moderate correction, and *molliter manus imposuit*. Replication, *de injuria*, &c. and new assignment. (See Declaration, p. 4.)
 6.
 9.
 346. Plea, custom of city of London at a *wardmote* to appoint persons to inspect houses of ill fame, and *defendants so appointed* entered house, &c. as they lawfully might.

2. Under Legal Process.

1. Civil.

PRECEDENTS IN
BOOKS OF PRACTICE,
REPORTERS &c.

Plea of justification of an assault, defendant being master of a sloop, and the plaintiff a *sailor refusing to do his duty*,
 Plea to trespasss for assault and battery brought by *husband and wife*, not guilty to the force, and to the residue, that one H. D. was plaintiff in action against the husband in the mayors court of Guildford, in which a plaint issued to one of the defendants to arrest him, who took him into custody, from whence he escaped, whereupon he, together with the other defendant in his custody, retok him in

2. R. P. C. 44-2

IN THE CIVIL DIVISION.

PRESENTS
BOOKS OF PLEAS,
REPORTS, &c.

fresh pursuit, upon which the wife's son *son assault demesne* to rescue the husband, against whom they defended themselves, which is the same assault,

Lill. Ent. 459.

Plea of justification to action for false imprisonment under a process of execution out of an inferior court on a judgment in an action of assumpsit there,

Cowp. Rep. 18.

Plea (to declaration in trespass, assault, and imprisonment against the censors, &c. of the college of physicians), not guilty to the force and arms, beating, and wounding, and issue thereupon joined; to residue, letters patent of H. 8. to the college of physicians that they were incorporated, and statute of H. 8. to the college of physicians that they were incorporated, &c. Replication, with several protestations, *de injuria*, &c. Demurrer, with special causes. Joinder.

1. Ld. Raym. 454.

Plea by two defendants to trespass for false imprisonment, arreſt by process issuing out of a court of records at Hull as bailiff. New argument, that one of defendants voluntarily released to plaintiff with the consent of the other. (Defendant plaintiff in the original suit.)

2. T. R. 172.

Plea, justification in assault and imprisonment under a *latitat* to the sheriff and his warrant to the defendants, with a traverse as to their being guilty, *aliter vel alio modo*,

1. R. P. C. B. 151.

Plea to trespass for assault and imprisonment; as to part, not guilty; as to residue, defendant is keeper of the county gaol of York, *capias ad respondendum* issued against plaintiff, went delivered to the sheriff, plaintiff arreſted thereon, plaintiff committed to the custody of defendant. Replication, defendant is guilty after plaintiff was discharged, and issue,

2. R. P. C. B. 60.

Replication to plea of *son assault demesne*, that the assault was in the execution of his office as *constable*, by virtue of a warrant directed to him by a justice of peace.

2. Lill. Ent. 445.

Plea (to trespass for an assault and imprisonment of plaintiff), that defendants were censors of the college of physicians, and that plaintiff advised unwholesome medicines, for which they, by their warrant, committed him to prison,

Com. Rep. 76.

Plea of justification of trespass, that plaintiffs were unlawfully carrying on a traffic in the East Indies, and that defendant sent him home, which he lawfully might do,

2. Bl. Rep. 1277.

Plea of justification to trespass, that A. L. was sheriff of the duchy of Lancaster, and took the plaintiff by a *testatum capias* under the seal of the county palatine, and by virtue thereof the preceding sheriffs assigned over plaintiff to defendant, who detained him. Replication, that long before the suing out said writ plaintiff was an attorney of the court of B. K. and afterwards delivered a writ of privilege to the said sheriff the defendant. Rejoinder, not guilty. To the new assignment; that plaintiff at the time of the trespass, and for one year before, was not once, &c. De-
Vol. IX.

Ld.

murder.

INDEX TO LEADING TITLES OR HEADS

PRECEDENTS IN
BOOKS OF PRACTICE,
REPORTERS, &c.

murrer for cause, defendant has attempted to put in issue a matter wholly immaterial,

2. Bl. Rep. 1085.

Plea (to trespass and false imprisonment), a justification that on the eighteenth of April, &c. &c. a bill of Middlesex was sued out at the suit of defendants indorsed for bail two hundred pounds, by virtue of an affidavit of the cause of action. Special demurrer,

3. T. R. 183

Plea of justification to trespass by husband and wife for a battery on the *feme*, that defendant was *beadle to the merchant taylor's company*, and plaintiff came into their hall and made disturbance, and defendant by command of the master and wardens *molliter manus imposuit* and put her out,

2. Lill. Ent. 456.

(See *Molliter Manus Imposuit*, *Post*.)

Plea, that defendant was a *churchwarden*, and plaintiff made a noise in the time of divine service in the church, and defendant admonished him to go out, and he refused, *per quod* defendant *molliter* struck him with his cane. Replication, *de injuria*, &c. *Tho.* 326.

Plea by churchwarden for uncovering a person who kept his hat on in church, and traverse that he is guilty on the day in the declaration, and demurrer, 1. *San.* 10. That one R. by virtue of a warrant in B. R. arrested plaintiff, who resisted the warrant and made an assault upon R. *per quod* defendant came to the assistance of R. and put his hands on plaintiff, 2. *Bro.* 142.

That plaintiff, with persons unknown, entered into defendant's house and disturbed him in possession thereof, *per quod* defendant *molliter manus imposuit*, and expelled him from the house. Replication, that defendant was constable, and entered defendant's house, that he might not murder his wife, and to keep the peace, and defendant *de injuria* made an assault, *Tho.* 300.

That plaintiff made a great disturbance at the election of two citizens for the city of H. for parliament, not having a vote, and defendant, as *servant of the mayor*, *molliter manus imposuit* on plaintiff to compel him to withdraw. Replication, protesting that he had a vote, pleads *de injuria*, &c. and traverses the command of the mayor, and issue, *Tho.* 306.

Plea (to battery by husband and wife, for beating the wife). Justification, as *celler under commissioners of sewers*, by virtue of a justice of peace, his warrant in assisting the constable to keep the peace, *Tho.* 416. Replication, *de injuria*.

Plea (to trespass and assault against L. B. and A.) that W. made an assault upon L. upon which constable came to arrest W. whom plaintiff would have rescued, and B. and A. came to the aid of the constable, and plaintiff would have beaten them, but they defended themselves. Replication, *de injuria*, *Ra.* 612. *Vet. Int.* 29.

Plea by park-keepers on the statute, for that plaintiff was wandering about the park, and would not withdraw. Replication, *de injuria*, *Co. Ent.* 643.

Civil Process.

Plea, justification, assault and battery, imprisonment and detainer, &c. until delivery to the other defendant, the ground by a *cu sa on a judgment in an inferior court*, and another justification of assault, imprisonment and detainer, and not guilty to the battery, 2. *Lut.* 930.

Plea

Plea of justification by *bailiff* of sheriff of county palatine of Chester by a *capias ad satisfaciendum* on a nonsuit in the exchequer for costs, directed to the chamberlain there, and another *capias ad satisfaciendum* under the seal of the county palatine, directed to the sheriff there, and a warrant made by himself to defendant, 2. *Lut.* 932.

Plea of justification by a *capias ad satisfaciendum*, to residue by the judge, officer, and party plaintiff in an inferior court, in debt brought by him as administrator. Replication, that cause of action arose out of the jurisdiction, &c. *absque lo.* that it arose within, &c. *where that was not alledged in the bar*, and traverse immaterial, but the other part of the replication held good, and yet judgment for all the defendants, 2. *Lut.* 935.

Plea to all, except assault and imprisonment, not guilty, and justifies by *process out of the inferior court* where the plaintiff escaped to a place out of the jurisdiction, and retaken on fresh pursuit, 2. *Lut.* 938.

Plea of justification to the assault, battery, and imprisonment, &c. of plaintiff by *capias ad satisfaciendum* to the sheriff of H. on a judgment in C. B. where plaintiff was arrested in a vill in the county of H. which was surrounded by the county of S. for that they brought him through the said county to the gaol of H. but he resisted, &c. 2. *Lut.* 940.

WITHOUT PROCESS, AND BY PEACE OFFICERS, AND IN AID OF THEM.

That defendant being a *constable*, and seeing plaintiff conducting himself ill and disturbing the peace put him in the stocks, 2. *Bro.* 222. *Ch. Aff.* 99.

That plaintiff's brother was killed or murdered, and defendant had suspicion of plaintiff, *per quod*, &c. *Bro. Vad.* 478.

Justification by *constable*, for that plaintiff made a hue and cry of thieves, thieves, and a great disturbance, &c. *Bro. Vad.* 479.

Taking plaintiff as a vagabond, *Bro. Vad.* 480.

That defendant was mayor and justice of the peace for the time of the ancient borough of N. and that plaintiff, with others, *disturbers of the peace*, unlawfully met together to subvert the laudable government of the borough, so conducted himself towards the mayor and others, *per quod* the mayor fearing a tumult imprisoned plaintiff till he found bail. Replication, *de injuria*, 2. *Bro.* 146.

That plaintiff kept a common tipling and disorderly house, and received suspected persons, defendant went with a constable to take with a magistrates warrant, *Ibo.* 313. *Vet. Int.* 223.

Plea to imprisonment against four, two of whom were *sheriffs* of the city of C. and plaintiff, as a citizen, speaking scandalous words of them, two others, *defendants*, *de injuria*, *per quod* and by their command for contempt of plaintiff, imprisoned him the whole night. Replication, *de injuria*, 2. *Bro.* 222.

That divers persons were in custody on account of a riot in London, and defendant came to the place and provoked the *guard*, tending to a commotion, *per quod* the defendant by command of the officer on guard took plaintiff, and took him into their custody to prevent it. Demurrer, *Ibo.* 345.

That defendant was a *constable*, and plaintiff made an assault upon him, *per quod* he committed plaintiff to prison. Replication, *de injuria*, *Co. Ent.* 165. *Abb.* 303.

That defendant being a *constable*, took plaintiff a *woman*, *per quod* he committed her to prison, and put her in the stocks. Replication, *de injuria*, *Upp.*

That plaintiff, at the time of the fair, wounded defendant's wife in her hand, and on her threatening defendant, *constable*, to preserve peace and prevent greater damage, committed plaintiff to custody. Replication, *de injuria*, 3. *Er.* 216.

That plaintiff broke house in the night, and put the master of the family in fear of his life, *per quod* defendant being (*decennaries*) a tything man, took and detained him for half an hour to be examined. Replication, *de injuria*, Co. Ent. 305.

That S. was robbed of two silver cocklears, and that plaintiff frequented house without reasonable cause, and was there at the time of the felony committed, and that defendant being sheriff of the city, took and imprisoned plaintiff on suspicion of felony. Replication, *de injuria*, Ru. Ent. 341. Upp. 205.

That horse was stolen, and there was a report that plaintiff stole him, and defendant, *bailiff of the manor*, took plaintiff. Replication, *de injuria*, Ash. 301.

That A. stole a horse, and there was a report that plaintiff had received him, *per quod* one defendant took plaintiff as an accessory, and the other defendant at his request assisted him in taking him to goal, Ash. 303.

That defendant, a watchman in the town, took plaintiff travelling in the night, according to the statute, Upp. 208.

That defendant, being *bailiff of a liberty*, took plaintiff a vagabond according to the statute. Replication, that plaintiff is a taylor, and inhabitant, and traverse that he is a vagabond, Upp. 211.

That plaintiff kept an ale-house and conducted it improperly (*luxuriose vixit*), *per quod* defendant, in aid of the constable, took the plaintiff that he might be punished according to law, Bro. Vad. 429. according to the custom of the city, Ash. 302.

That defendant suspecting plaintiff kept laqueas, nets and dogs for poaching and hunting, entered plaintiff's house with a magistrate's warrant to find them, and there found and took two dogs. Replication, *de injuria*, Tho. 359.

Plea to assault *son assault demesne*, and as to all the residue, except imprisonment for eleven hours, *non. cul.* and that plaintiff hindered defendant, being sheriff of the city of C. in execution of his office, *per quod* defendant took and detained plaintiff till morning to preserve the peace. Demurrer and judgment for defendant, no answer to the *vi et armis*, 1. San. 77.

That plaintiff in the night burglariously broke the house, *per quod* defendant led him to the *bailiff of the city* to be examined, and the bailiff after examination sent him by defendant his servant to prison, where he was detained till he was discharged by a magistrate's warrant, Ash. 304.

That plaintiff made an assault, &c. upon the wife of M. and defendant took and detained him until it was known she had recovered, Ash. 304.

That plaintiff committed homicide, and defendant being sheriff seized the goods and chattels to make appraisement, by which the debt of our Lord the king might be the better satisfied if plaintiff should be convicted of the felony, and to return them if he should be acquitted, 1. Bro. 342. and traverse that he is guilty in the county of L.

That R. lost goods of defendant, and there was a report that he had concealed himself with the goods in plaintiff's house, *per quod* defendant made fresh pursuit into plaintiff's house with a constable, and took the goods there found among plaintiff's goods. Replication, that defendant took plaintiff's goods, rejoinder, *issue*, Ra. 646.

Plea (to taking away a prisoner), that he was a vagrant, and traverses that he is a prisoner of war, 1. Bro. 336. 1. Br. 165.

IN THE CIVIL DIVISION.

By Authority of Law, and under Legal Process.

1. Civil. (20)

PRECEDENTS IN
BOOKS OF PRACTICE,
REPORTERS, &c.

Plea of special justification (to trespass for taking and driving sheep and lambs) *under a levary facias*, grounded on an outlawry, certified into the exchequer chamber. Demurrer and joinder,

3. L. Ray. 145. N. Ed.

Plea (to trespass for breaking and entering and expelling, putting out and amoving plaintiff from the occupation and enjoyment, &c.), 1st, Not guilty; 2d, justification of breaking and entering in the first Count as sheriff of Middlesex *under a fieri facias*; 3d, justification of the expulsion in the 2d. Count, under a *feri facias* that plaintiff was possessed of a term for years in premises, that defendant seised and sold it to T. H. who afterwards entered and quietly expelled plaintiff,

1. H. Bl. Rep. 555.
3. T. R. 492.

Plea (to an action of trespass for taking the plaintiff's goods) of justification *under a warrant of distress* granted by commissioners of the Duffield inclosure act, for non-payment of the plaintiff's share of the assessment on him as a proprietor. Replication, that defendants repaired other roads, which defendants were not bound to repair, *de injuria*, &c. took the goods. Demurrer,

5. T. R. 122.

Plea (to trespass for taking plaintiff's vessel), that the cargo was exported from his majesty's territories in the said vessel sailing on the high seas, and was not a vessel belonging *only* to the people of England, and that defendant seised said vessel as forfeited. Replication, protesting that cargo was not exported, defendant seised said vessel as forfeited without any sentence of condemnation. Demurrer,

5. T. R. 112.

Plea (to trespass for taking plaintiff's butter), justification as one of the jury, taking the butter *under a custom* that every pound of butter *should be of the weight of eighteen ounces*. Demurrer and joinder,

3. T. R. 112.

Plea (to trespass for breaking and entering plaintiff's house), special justification *under a warrant* from the secretary of state, on information that defendants were printers of a seditious pamphlet called the North Briton. Replication, *de injuria*, &c. and special verdict,

2. Will. 273.

Plea (to trespass for breaking house, &c. and taking twenty barrels of beer), a warrant on a plaint in *replevin*. *Imparlance*, suggestion of the queen's death,

2. Lill. Ent. 453.

Plea not guilty by one; justification by another *under a warrant on a writ of habere facias possessionem* of three houses in H. and that he entered into one and delivered possession, and by command of the plaintiff in ejectment took the goods out of the said house, and put them in the highway in H. next to the said house, and that he requested the plaintiff to go out, that he refused, upon which he put his hands

INDEX TO LEADING TITLES OR HEADS

hands upon plaintiff, and on that he assaulted him, and defendant defended himself. Replication, *de injuria, &c. absque, &c.* Demurrer and judgment for defendant, 2. *Lut.* 1381.

Plea (to declaration for entering close and taking the goods), justification by *sheriff's warrant on a fieri facias on a judgment* against one Dunn. Demurrer and judgment for plaintiff, for that defendants, by M. S. their attorney, "the force and injury when, &c." without saying "comes and defends the force and injury when, &c." and also for that it is not averred that goods were the goods of Dunn, and if it had been averred, yet any special matter to justify the entry ought to be shewn, 2. *Lut.* 1385.

Plea (to taking cattle), that defendant by virtue of a *warrant on replevin* made to him by the sheriff, took the cattle. Replication, that plaintiff, at the time of taking claimed property in the cattle. Rejoinder, that plaintiff claimed property in other cattle, and traverses claim of property in cattle in the writ named, *Bro. R.* 476. Like plea, *Tbo.* 378.

That property in the goods was in one J. who made his will, and plaintiff executor, and afterwards made a later will proved in chancery, constituting defendant executor, and *gives colour*. Replication, protesting that J. did not make a later will; for plea, that J. in his life time gave the goods to plaintiff, and defendant *de injuria sua propria* took the goods. Rejoinder, maintaining plea, traverses that J. in his life time gave goods to the plaintiff, and issue, *Wi. Ent.* 1001. *Ra.* 641.

Plea (to trespass for taking away the wife with the goods of the husband), to all the trespasses, except the abduction, *non cul.* and to the abduction, that plaintiff inhumanly beat his wife, and afflicted her so grievously, and used her with so much cruelty that it was inconvenient for the wife to cohabit with plaintiff for fear of death, and that the wife to save her life departed from the plaintiff and drew him into plea in the court christian for the causes aforesaid, and the plea remaining undetermined, the wife requested the defendant to assist him with her counsel, *per quod* the defendant took the wife by her hand, and in prosecution of the said plea led her to the said court, and from the court brought her back to an inn, 2. *Bro.* 283.

Plea (to trespass against husband and wife), that J. levied a plaint against plaintiff the husband in the sheriff's court of London, and defendant being *serjeant at mace* arrested him there-upon, and wife would have hindered defendant, who *molliter manus imposuit*. Replication, *de injuria, Ra.* 668.

That defendant made oath before a justice of peace for fear of damage from plaintiff, on which the magistrate made his warrant to defendant, who notified it to plaintiff who resisted the warrant, *per quod molliter manus imposuit* on plaintiff. Replication, *de injuria*, and traverses the notice of warrant before apprehension, *Ra.* 669.

That defendant took plaintiff by virtue of a *warrant* directed by the sheriff *en a writ of alias capias* issuing out of B. R. and for want of bail imprisoned, 2. *Bro.* 284, *Tbo.* 320.

That defendant as *bailiff* took plaintiff by virtue of a *warrant* directed to him by the sheriff *en a capias* in C. B. and two shillings for the sheriff's fees received of plaintiff. Replication maintaining declaration, and traverse that defendant took plaintiff on the warrant *before the return of the writ* and issue, 1. *Br.* 219. *Tbo.* 344. *Pl. Gen.* 621. and detained plaintiff till he found security.

Similar plea, on *coroner's warrant*. Replication, that there are divers other coroners in the county who were jointly coroners together with R. and J. who did not join in the execution of the warrant. *Nil dicit* to the replication, and judgment thereupon, with inquiry of damages awarded, *Bro. R.* 487. Like plea, and traverse of guilty at J. Demurrer, *T42.* 367.

Similar plea *ex precessu* issuing out of the city court of London, and traverses that he is guilty

- guilty at G. or elsewhere out of the jurisdiction. Replication, *de injuria*, and traverses arrest on process, and issue thereon, *Tho.* 366. *C. Aff.* 89.
- Plea that one defendant, as *bailiff* on a warrant on a *capias* in C. B. took plaintiff who made an assault on defendant, and would have rescued himself, *per quod* the other defendants *came to his aid* and detained plaintiff's body until, &c. Replication, protesting that there was no writ or arrest on the warrant, pleads *de injuria*, &c. and traverses the assault and rescue and issue, 2. *Bro.* 135.
- That defendant with another, took one J. on a warrant on a writ of *supplicavit*, whom plaintiff would have rescued, and made an assault on defendant and others, *per quod molliter manus imposuit* upon plaintiff and removed him. Replication, *de injuria*, &c. 2. *Bro.* 136.
- Plea that plaintiff was taken on an attachment of privilege at the suit of an attorney, and detained until, *Tho.* 316.
- That defendants, as *bailiffs* (sheriff's officers) took plaintiff on a warrant directed to them on a *latitat*. Replication, plaintiff confesses the writ, warrant, and arrest, but tendered sufficient bail, which defendant refused. Demurrer, *Tho.* 146. Like plea and replication. *Rejoinder* as to imprisonment after tendering bail not guilty. *Pl. Gen.* 627. Like plea, *Tho.* 315. Replication, *de injuria*, &c. *Tho.* 370. Like plea, with traverse that he is guilty before a certain day. Replication that he is not guilty before, *Tho.* 384. Like plea, and traverses *aliter vel alio modo*, &c. Replication, *de injuriis propriis*. Demurrer, joinder, and judgment for defendant. Replication does not conclude to the country, 3. *Lev.* 62.
- That plaintiff being a prisoner in execution in the prison of the castle of N. sued out a *habeas corpus* to remove himself to B. R. *per quod* the sheriff deputed defendant to have plaintiff according to the tenor of the writ, and being sick on the way requested defendant to take him back to the prison, which is the same imprisonment, 2. *Bro.* 148.
- That sheriff directed his warrant on a bill of *Middlesex* to the *bailiff* of the liberty of S. and defendant as his servant to arrest plaintiff entered the house, the doors being open. Replication, *de injuria*, and traverse that the doors were open, *Tho.* 299.
- Plea that he took plaintiff by a warrant on a *capias utlagatum* at the suit of J. and other defendants *came to his aid* and detained him until he voluntarily paid defendant fourteen pounds for the use of J. *Tho.* 308. Replication, *de injuria*, and traverse that he is the same person, *Ibid.* 313.
- That B. levied a *plaint* against plaintiff in the *marshall's court*, and a *capias* awarded to defendant who took plaintiff, *Tho.* 309.
- That B. levied a *plaint* against plaintiff in an *inferior court of record* by prescription proceeded on to judgment, and *capias ad satisfaciendum* awarded to defendant who took plaintiff thereon. Replication, *de injuria*, and traverse that B. is *within the jurisdiction* of the court, *Tho.* 312.
- That defendant as *bailiff* of an *inferior court of record* took plaintiff by virtue of a precept directed to him, *Tho.* 302. Like plea by serjeant at mace, court of record by prescription, *Tho.* 342.
- Plea (to trespass and imprisonment against four), by three, that they took plaintiff by virtue of letter's patent of *commission of rebellion* out of the court of chancery, and the other defendant came to their aid, *Tho.* 321.
- Plea (to similar trespass against two in London), by one as under sheriff, and by the other as his servant, that they took plaintiff by virtue of a writ of attachment of privilege out of C. B. and detained him, &c. and traverse that they are guilty at London. Replication, *de injuria*, *Bro. R.* 477.
- That defendant recovered judgment in case in C. B. against plaintiff for damages, on which he sued out a *capias ad satisfaciendum*, directed to sheriff of N. who commanded the *bailiff* of the liberty of the duchy of Lancaster, and he by virtue

INDEX TO LEADING TITLES OR HEADS

of the mandate, at the request of defendant, took plaintiff and detained him in custody for the damages until he paid the money to the bailiff to the use of defendant, and traverses that he is guilty before the issuing of the writ, and after the return thereof. Replication, that defendant is an attorney of C. B. and entered judgment against plaintiff, whereby no judgment ought to have been entered, and thereupon defendant *de injuria*, &c. imprisoned plaintiff, and afterwards entry of the judgment was adjudged void by the court. P joinder, maintaining plea, and further, that by negligence of the clerk, judgment was entered irregularly and made void by the court, and traverse that it was fraudulent. Demurrer, 2. Hen. 150.

Plea (to count for assault and imprisonment until payment to the officer and gaoler in the inferior court), not guilty to all, except assault, imprisonment, and detention till fifty-four shillings and fourpence was paid, and justification by *process of execution on a judgment of a court of record* of Saint B. in the county of G. held by prescription from three weeks to three weeks before the constable there, or his deputy and two suitors. Demurrer and judgment for plaintiff for several faults in the plea, 2. Lut. 913.

Plea (to count for assault, &c. on two days, and detained on the last till plaintiff made to defendant a fine of 10l.), the first assault, &c. by a *warrant on a writ of privilege*, and justification of the other by two of defendants by a *capias utlagatum*. Demurrer, 2. Lut. 219.

Plea (to count for assault, &c.), to the wounding, not guilty; and as to the residue of the trespass, &c. Justification by two of defendants by a *precept of capias ad satisfaciendum on judgment in an inferior court* in debt on bond, and that they jointly laid their hands, &c. to arrest him, and then detain him at the request of the other defendant. Replication, that after the judgment, and before the said *capias ad satisfaciendum* (which was more than a year) there was no other judgment, *neither a scire facias* on this judgment. Demurrer and judgment against plaintiff for discontinuance, 2. Lut. 925.

CIVIL PROCESS.

Plea to count for assault, &c. by defendants, together with J. B. that the trespass, &c. was committed by them and the said J. B. jointly, and that plaintiff brought an action in C. B. against the said J. B. for the said trespass, &c. and that judgment by *capias ad satisfaciendum* was had, and to avoid paying it he had paid to plaintiff's attorney by his assent the money recovered. Replication, *nullius in terra*. Rejoinder, that there is, and prayer that record may be inspected by the justices, &c. and on motion there was a *variance*, &c. Judgment for plaintiff against defendant for not averring that it was the same trespass, 2. Lut. 944.

Plea (to assault, battery, and imprisonment), defendants. Forfeins at mace, justify arresting the plaintiff by virtue of an *attachment out of chancery*, and traverse *before or after*. Replication, *de injuria propriis*, and traverse *that before the trespass* attachment was delivered to the sheriff. Rejoinder, as to the *time of the delivery such a day*, and that they, *after the warrant* delivered to them, and not before, arrested plaintiff; and further say, that they had no notice, but that the writ of attachment was delivered to the sheriff before the trespass. Surrejoinder, that the attachment was not to be delivered to the sheriff before the trespass. Rebutter, that defendants had no notice, and renders issue. Demurrer, joinder, and judgment for defendants, Lev. Ent. 191.

Plea recovery on bond in the court of exchequer, and *capias ad satisfaciendum* thereon against plaintiff, *per quod* plaintiff praysoyer of *capias ad satisfaciendum*, and then pleads no *scire facias* issued out in three years space. Demurrer, Lev. Ent. 206.

That

- That defendant recovered his debt and damages in C. B. against plaintiff, and sued out a *capias ad satisfaciendum*, and being taken attempted to escape; *per quod* defendant in aid of the sheriff and by his command led plaintiff to prison. *Hir.* 394.
- That defendant, bailiff of a wapentake, took plaintiff by warrant on latitat, and detained him until he paid two shillings and fourpence, and gave bond for his appearance. *Ash.* 305.
- Plea to imprisonment in Norfolk by *capias ad satisfaciendum* in Suffolk; warrant thereupon to defendant and others who arrested plaintiff in Suffolk, and plaintiff rescued himself and escaped into Norfolk, where one of defendants, under sheriff, and the other by the warrant retook plaintiff. Replication, confesses *capias ad satisfaciendum*, warrant, and arrest, and pleads that sheriff after arrest voluntarily permitted plaintiff to go at large, and traverses that one as under sheriff, and the other as bailiff, retook him by virtue of the warrant. Demurrer, 3. Br. 218.
- Plea (to imprisonment in London against A. and B.), that A. as under sheriff, and B. as his servant, took plaintiff by attachment out of court of common pleas, and traverse that they are guilty in London. Replication, *de injuria*, 1. Br. 172.
- Plea to trespass against defendant, who levied a plaint against plaintiff in an inferior court of record, and bailiff arrested plaintiff thereupon, and defendant shew the plaintiff to the bailiff. Replication, *de injuria*, and traverses that defendant levied a plaint before imprisonment. *Ra.* 341. *Vel. Int.* 165.
- That defendant levied plaint against R. in the borough court in debt, when plaintiff was one of the bail for the said R. against whom defendant had judgment on verdict, and the said R. was not found, *per quod* plaintiff was taken. Demurrer, *Co. Ent.* 304.
- That defendant, serjeant at mace, took plaintiff in an action of account (*in computatoris*) whence plaintiff would have rescued himself. *Ash.* 306.
- Justification of imprisonment by *capias in withernam*, according to the custom in Sandwich, against citizens of London in defect of justice, by the mayor and aldermen of London. Demurrer, *Co. Ent.* 299.

Superior Courts.

- Plea by defendant, judgment in the C. B. and *feri facias* to the sheriff, and warrant to the bailiff, who took the goods and would have carried them away but plaintiff *vi et armis* endeavoured to rescue the goods, and defendants *molliter manus imposuerunt* to prevent them. Replication, *de injuria*, &c. *absque hoc* that defendant came in aid of bailiffs, and by their command *molliter manus imposuit*. Demurrer, 3. Lev. 109.
- Plea to assault and menace of life, and breaking close and house, &c. Justification under a sheriff's warrant, directed to all the bailiffs on a writ *de homine replegiando* to replevy one L. taken and detained by E. S. unless, &c. which was delivered to defendant P. one of the bailiffs, and for that the said W. L. was obliged to plaintiff's house, be in aid of the said P. and by his command entered into the said house, and the plaintiff assaulted him, and *molliter manus imposuit*. Replication, *de son tort*, &c. and traverses that the defendant entered the house by the command of defendant P. Rejoinder, that he entered by the command of said P. and so concludes to the country. Demurrer and judgment for plaintiff, 2. Lut. 1428.
- Plea (to battery by husband and wife of wife when sole), of justification of arrest of the wife by sheriff's warrant on *capias ad respondendum*, and that on this she assaulted defendant, and being so assaulted, &c. Replication, *de injuria*, &c. *absque tali warranto*, and concludes to the country. Demurrer, with causes, and

- and judgment for plaintiff, for that plea does not shew out of what court the *capias* issued, 2. *Lut.* 1458.
- That defendant, by virtue of a warrant directed to him by the sheriff to make replevin, entered into the close and took plaintiff's cattle, *Tho.* 312.
- Plea (to trespass for breaking a house), justification as sheriff's bailiff, by warrant directed on a writ of *habere facias possessionem*, *Tho.* 330. *Lev. Ent.* 156.
- Plea, that defendants as servants of sheriff and by his precept on a writ of *levari facias* issuing out of the court of exchequer directed to him, took plaintiff's cattle for *fee farm rent* unpaid to our lord the king, and levied to the use of our lord the king. Demurrer, *Wi. Ent.* 991. *Her.* 813.
- Plea (to taking cattle), took them by a sheriff's warrant on a writ of *fieri facias*, and detained until plaintiff paid the money to defendant for the use of the sheriff for delivery of the cattle, and traverses that he is guilty before such a day, and after the return of the writ. Special demurrer, 2. *Ven.* 91.
- That the abbot by prescription was seised of the manors whereof the king had rents arising, and to be taken by the sheriff as parcel of the profits of the county, and defendant as sheriff took the cattle for rent unpaid and accounted for the same in the exchequer, and prays in aid of the king, *Ra.* 673. 1. *Br.* 289. *Her.* 738.
- Not guilty to part; justification as to the imprisonment by a recovery in the court of exchequer, and a *capias adjatisficiendum*, &c. *Lev. Ent.* 205.

In Inferior Courts.

- That E. levied a *plaint* against plaintiff in the *marshalsea court*, and *capias* thereupon awarded to W. who requested defendant to shew plaintiff to him, and defendant put his hand on his shoulder to shew him, and traverses that he is guilty *in forma* in the declaration, *Ra.* 341.
- Plea, that defendant levied a *plaint* in the *marshalsea court* against plaintiff in trespass, attachment awarded, and return of *nihil habet capias* awarded to the marshali who made his warrant to his servants who took plaintiff, and he escaped and they retook him on fresh pursuit, and defendant in *their aid*. Replication, *de injuria*, and traverses *coming in aid*, *Ra.* 342.
- That judgment was obtained in case in *marshalsea court*, and plaintiff being one of his bail was taken in execution. Replication, that neither part belonged to the king's palace. Demurrer, 10. *Co.* 69. *should be neither party*
- Plea (to imprisonment against M. and L.) that M. levied a *plaint* in trespass against plaintiff in the *stannary court*, whereon warrant was made to T. and to others to take plaintiff, and T. by virtue of the warrant, and M. in *his aid* and by his command took plaintiffs at P. within the stannary. Replication, *de injuria*, and traverses that P. is within the stannary, 3. *Br.* 221.

Under Legal Process.

2. Criminal. (21)

Warrant of Secretary of State—of Justices of the Peace, &c.

Vol.

IX.

Page

336.

Plea (to declaration for breaking, &c. into a house, breaking open desks, seizing goods, making an as-

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IN THE CIVIL DIVISION.

crv

Vol.

IX.

Page

fault on plaintiff, and imprisoning him), that the defendant was *secretary of state*, and that one A. B. having accused the plaintiff on oath of high treason, the defendant *made out his warrant* to apprehend him; and it appearing to defendant plaintiff was guilty he committed him to the tower.

348. Plea (to declaration for assault and imprisonment, and carrying plaintiff from A. to B.), that D. J. and W. G. are two *justices of the peace* for the borough of K. and *made out their warrant*, directed to the *constable* of the said borough and the *keeper of the house of correction*, reciting that plaintiff had been brought before them to be examined *respecting his legal settlement*, and had *refused* to answer questions, wherefore they *commanded* the constable to take him into custody, and deliver him to the keeper of the house of correction, who was ordered to receive him; *warrant* was delivered to W. M. who *arrested* plaintiff and delivered to defendant, who is the keeper of the house of correction. *Molliter minus inposuit*, &c. Replication, new assignment, not only, &c. but for imprisoning on *other* occasions, and confining him in a damp cell. To 2d plea, *de injuria*, &c.

That defendant took plaintiff by a magistrate's warrant to find security for the peace. Replication, *de injuria*, *Ra. 341. Vet. Int. 232.* Like plea, and special replication, *Upp. 200. 219.*

That plaintiff forcibly disseised M. upon complaint of which a magistrate *recorded the force*, and committed plaintiff to defendant's custody, being a gaoler. Replication, *de injuria*, and traverse that a magistrate committed plaintiff to the custody of defendant, *Ra. 341. Vet. Int. 178*

Plea, not guilty, by *one*; by another, the statute against those who hold heretical opinions, to be imprisoned by the bishop, and that parishioners should pay tithes; and that plaintiff entertained the opinion that he ought not to pay tithes, and that defendants took him by *command of the bishop*, and plaintiff broke prison, *Ra. 340.*

That plaintiff practised the art of medicine in London, not being a licentiate by the college of physicians of London, who committed him to prison by the statute. Replication, that he was graduated at the university. Demurrer, *8. Co. 110.*

3. MODERATE CORRECTION. (22)

Vol.

IX.

Page

355. Plea (to trespass for imprisoning and flogging plaintiff, and putting him in irons), that defendant is captain of a king's ship of war, and that plaintiff was one of the sailors; and because he disobeyed orders defendant caused him to be moderately flogged and put in irons. Several pleas, *vide*.

4. MOLLITER MANUS IMPOSUIT
in Defence of

1. Real Property.
2. Personal Property.

(See ante, p. ciii.)

} (23)

Vol.
TX.

Page

34. Plea (to declaration for an assault, and dragging plaintiff over a wall), 1st, *Non cul.* 2d, As to the assault, that defendant was possessed of a close in which there was a brick wall, and that plaintiff at the said time when, &c. was pulling down the wall and carrying away the materials, whereupon he was required to desist, but refused; and defendant *molliter manus imposuit* to prevent him. 2d, *Son assault demerjæ.* (See declaration, p. 33.)

PRECEDENTS in
BOOKS of PRACTICE,
REPORTERS, &c.

Plea (to assault), 1st, Not guilty by one defendant; not guilty to part by another defendant; issue as to the residue, plaintiff entered into defendant's dwelling-house, and disturbed him in the possession of it, and defendant *molliter manus imposuit*.

2. R. P. C. B. 58

Plea, as to the force, &c. and all the imprisonment, except four hours, not guilty, and issue; and as to that imprisonment, that plaintiff feloniously broke and entered into one of defendant's houses in the night, and that he and the other as his servant *molliter manus imposuit* to turn him out. Replication, *de injuria*, &c.

Plead. Aff. 495

Plea (to assault and battery), not guilty to the force, &c. and wounding; to the residue, in defence of his possession in a close in C. traverse that he is guilty at H. Replication, traverse on A. traverse, and demurrer for that cause, and joinder.

3. Ld. Raym. 112

Plea (to trespass for an assault on an infant), after imparlance not guilty to force; to residue, that plaintiff entered his stable and frightened horses at N. in the county of Chester, and defendant in defence of his master's property *molliter manus imposuit*, with a traverse that defendant is guilty elsewhere but in Chester. Replication, *de injuria*, &c. Suggestion, that issue ought to be tried at Chester.

2. Lill. Ent. 429

That defendant being in his house, plaintiff against defendant's will entered into the messuage and would expel defendant from the possession thereof, he defended himself. Replication, *de injuria*, &c. 2. Bro. 138. Tho. 333. 335.

That plaintiff entered into defendant's lands and grafs there, and with cattle eat-up, and defendant requested plaintiff to leave the lands; plaintiff refused and assaulted defendant, who defended himself in defence of his property, 2. Bro. 144.

That plaintiff would enter defendant's house against his will, and defendant pushed him

him from the door, and pulled him from it, 2. Bro. 144. Like plea, with a traverse that he is guilty of the assault in any other manner, *Tho.* 322.

defendant removed plaintiff out of the house by *molliter manus imposuit*. Replication, *de injuria*, &c. *Pl. Gen.* 633. *Tho.* 375. 399. With a traverse.

That J. seised of an ancient warren, made defendant his warren; plaintiff entered into the warren and made assault on defendant, who in execution of his office defended himself, and traverse that he is guilty in another place or elsewhere, *Tho.* 397.

Plea to trespass for assault, to the wounding not guilty; to residue justification in defence of his possession in a close in C. in the same county, with traverse that he is guilty at H. or out of the said close. Replication, that his entry, &c. was in, by, and through a certain way in the same close by his permission used and enjoyed, and on that defendant made a violent assault, &c. *assque hoc quod molliter manus imposuit*. Demurrer, with causes, and judgment for plaintiff. 2. *Lut.* 1435.

Justification of assault in prostrating a hedge affixed upon his own soil. *Cl. Ass.* 86.

To preserve possession of a dog. *Cl. Ass.* 92. *Bro. Vad.* 48.

That defendant possessed of one hundred and twenty sheep, plaintiff so grievously chased them that they were much hurt, to preserve which defendant and his servants *molliter manus imposuerunt* on plaintiff. Replication, that plaintiff being seised of houses and lands, had common in S. for all cattle; and because sheep were in common damage feasant plaintiff chased them, upon which defendant made an assault on plaintiff. Rejoinder, a custom for the inhabitants of H. to chase sheep beyond common to wash them. Surrejoinder, protesting *nulli tunc* custom; pleads, that sheep were out of the way; with traverse and issue, *Tho.* 324.

That plaintiff entered into close of R. and the wood in the same would have carried away; and defendant, by command of R. as his servant, came to servant and requested him to depart; that he would not, and defendant *molliter manus imposuit*. Replication, *de injuria*, *Tho.* 369. 2. *Bro.* 148.

Plea by defendants, that they kept possession of their master's land, and the plaintiff's servant would have entered, claiming title for his master, and assaulted the defendants; *per quod molliter manus imposuit*; and traverses the assault in the county of E. Replication, *de injuria*, and issue, *Bro. Vad.* 442.

That J. being possessed of a fox hound, delivered him to be safely kept, and plaintiff made an assault on defendant, and would take the dog from him, who defended himself and the dog. Replication, *de injuri*, &c. *Ra.* 611.

Plea (to trespass for breaking close and house, and assault), that *locus*, &c. is freehold of one defendant, and that he of his own wrong, and the other defendants as servants, broke the close, &c. and *molliter manus imposuit* upon plaintiff being there, and led him out of the house. Replication to the assault, *de injuria*; and to the trespass, that H. plaintiff's mother, was seised and died, from whom it descended to plaintiff, who was seised until defendant disseised. Rejoinder, that H. being seised, enfeoffed T. and D. T. survived, and enfeoffed defendant; and traverses that H. died seised, and issue. *Ra.* 455. *Upp.* 217.

Plea, that defendants, as servants, took the cattle damage feasant, and plaintiff immediately came to defendants and said, that he had done wrong to take the beasts, and that they should not lead them away, and made an assault upon them and would have taken the cattle out of their hands, on which defendants put him away from them again by laying their hands upon him. Replication, *de injuria*, *Ra.* 629. *Let. Int.* 161.

That plaintiff, seised of a close, demised it to defendant for years, and plaintiff entered into the close and broke the hedges, and defendant came to him and requested him to withdraw, but refused, and defendant *molliter manus imposuit*. Replication, *de injuria*, *Ra.* 612.

Plea (to breaking close and assault), title to lands by feoffment, and *molliter manus imposuit* upon plaintiff. Replication to assault, *de injuria*, *Upp.* 217.
 That bishop was seized of a chace extending into the town of B. in the declaration, and that plaintiff drove the deer there, and would not desist till defendant *took him by the arm* and kept him for an hour. Replication, *de injuria*; and traverses that the chace extends into the vill, *Ra.* 342. *Per. Int.* 187.
Plea (to trespass for chasing a mare, assaulting and menacing the servant), that defendant possessed of the close took the mare damage feasant, and intended to impound, which plaintiff's servant would have rescued, *to prevent which* defendant *molliter manus imposuit*. Replication, protesting, &c.; pleads that plaintiff and defendant were jointly possessed of the close that was sown with wheat, and plaintiff, with the mare and servant, entered to measure and divide the wheat, and take his part; and traverses that defendant was possessed as in the bar, and issue, *2. Bro.* 260.
 That plaintiff entered into defendant's land, and defendant would have taken a piece of wood in the possession of defendant; *per quod* defendant *molliter manus imposuit*. Replication, *de injuria*, *2. Bro.* 148. *Tbs.* 359.
 That defendant, possessed of one hundred and twenty sheep, plaintiff so grievously chased them that they received damage, to prevent which defendant *molliter manus imposuit* on plaintiff. Replication, that plaintiff seized of messuage and lands, had common in S. for all cattle (except sheep) from a day certain to another day every year; and because defendant's sheep were in the common *damage feasant*, he gently drove them, on which defendant made the assault. Rejoinder, confessing the prescription; pleads a custom for inhabitants of H. where he resided, to drive his sheep every year from H. to a river beyond the common to wash, and thence back; and defendant and his servant drove the sheep without stopping beyond the common to the river. Surrejoinder, protesting no such custom; pleads that sheep were *extra viam*; and traverse that defendant drove them without stopping, and issue, *Tbs.* 324.

3. To Preserve Peace.

Vol.

IX.

Page

27. Plea (as to imprisoning plaintiff, &c.), for the preservation of the peace charged a constable with plaintiff, that he might be carried before a justice of peace; and because it was Sunday, plaintiff was necessarily detained in custody; and as to the assault, that defendants *in aid* of the constable *molliter manus imposuerunt*. Replication, &c. (*See* Declaration and Pleadings, p. 21, &c.)
 34f. Plea to beating plaintiff, defendant porter of New Inn, *molliter manus imposuit* to *preserve peace*, to remove plaintiff out of the Inn, where he was making a great noise. (*See* other pleas, p. 340. &c.)

4. To Prevent Mischief.

357. Plea of justification to an action for assault, &c. that plaintiff presented a gun at defendant, and to *prevent*

IN THE CIVIL DIVISION.

cc

VOL.

IX.

Page

- his shooting him, defendant molliter manus imposuit and son assault demesne. (Several pleas, vide and post.)*
359. *Molliter manus imposuit* in defence of his master to prevent mischief, to trespass for assaulting, that plaintiff attempted to shoot at him.

PRECEDENTS IN
BOOKS OF PRACTICE,
REPORTERS, &c.

Plea to assault by two defendants, as to part not guilty, as to the residue by one defendant *son assault demesne*, the other a special son assault, viz. two defendants were sisters, the plaintiff and first defendant were fighting, and second defendant to *preserve the peace*, and in defending her sister, *molliter manus imposuit*, whereupon plaintiff assaulted her, and so, &c. Replication to the plea of the first defendant, *de injuria*, &c. To plea of second *de injuria*, &c.

2. R. P. C. B. 55

Plea to assault *molliter manus imposuit* to prevent mischief and *preserve the peace* by separating two persons fighting,

Lill. Ent. 481

That plaintiff made an assault upon J. and defendant, to *preserve peace*, *molliter manus imposuit* on plaintiff to *prevent greater damage*. Replication, *de injuria*, 2. Bro. 137.

Trespass and assault against A. and B. *son assault demesne* by A. plea by B. *molliter manus imposuit* on plaintiff and A. fighting, to separate them. Replication, *de injuria*, Ra. 613. Upp. 214.

That plaintiff made an assault on W. and defendant withheld him to prevent damage. Replication, *de injuria*, &c. 165.

5. On other lawful Occasions.

VOL.

IX.

Page

- Plea as to assaulting plaintiff, he was making a noise in the house, wherefore defendants *molliter manus imposuerunt* to remove him out of the house. (See Declaration and pleadings, p. 21, &c.)
361. Plea of justification by four defendants, two of them man and wife. to an action for assaulting plaintiff and taking money from him, that the plaintiff owed the husband money, and the wife by his desire *gently touched the plaintiff in order to demand the debt*, whereupon he voluntarily paid her.
362. Plea, 1st, General issue; 2d, justification by a tavern-keeper of *molliter manus imposuit* to prevent plaintiff from leaving defendant's house without paying for what he eat and drank.

363. Plea.

INDEX TO LEADING TITLES OR HEADS

PRECEDENTS IN
BOOKS OF PRACTICE,
REPORTERS, &c.

Vol.
IX.
Page

363. Plea, that A. B. was possessed of a shop, plaintiff entered and made a great noise, &c. and *molliter manus imposuit* by the defendant, as servant to A. B. to turn him out, and that the plaintiff assaulted defendant, and that defendant then defended himself, &c.

364. Plea (to trespass for an assault, and taking away a net), that A. B. was seised of the manor of A. and appointed defendant his gamekeeper, and the plaintiff not being qualified *molliter manus imposuit* to seize the net.

Plea to trespass and assault against three; two plead not guilty; the third, as to part pleads not guilty; as to the residue, that plaintiff was master of a ship, and plaintiff opposed and obstructed him in the discharge of his duty, - - 2. R. P. C. B. 47

Plea (to trespass for striking a mare), that one R. was riding violently on the mare against him, and defending himself struck the mare with a small prong or fork. Replication, *de injuria*, 3. Br. 457.

Plea, that plaintiff commanded his servant to take the cattle to agist, who took defendant's sheep. Replication, *de injuria*, &c. Ra. 605.

Plea, that plaintiff hindered him in selling his fish; *per quod*, &c. Replication, *de injuria*, Pl. Gen. 625.

That defendant possessed of two shillings as of his own goods, plaintiff would take them out of his possession; *per quod* defendant *molliter manus imposuit*, 2. Bro. 143. Like plea, *de pare chirothecarum* 2. Bro. 144.

That plaintiff endeavoured to divert the water out of the usual watercourse, and would not desist at defendant's request; *per quod* defendant *molliter manus imposuit*. Replication, *de injuria*, &c. Tbo. 370.

That defendant, as servant of T. took cattle in the name of a distress, which plaintiff endeavoured to rescue; *per quod* the stick which defendant had in her hand moved it towards plaintiff. Replication, *de injuria*, &c. Tbo. 421.

That defendant, possessed of a room in a common tavern belonging to plaintiff, entered into the place, and on the possession of defendant, and defendant amicably requested that he would not depart; *per quod molliter manus imposuit*. Replication, *de injuria*, &c. Tbo. 422.

Plea of *son assault demajns*, &c. Replication, that he was servant to W. S. retained to take care of his horses, and that defendant, with all his strength, endeavoured to beat, &c. one of them; *per quod* he put his hands on defendant to prevent him, and on this he assaulted plaintiff as in the declaration. Rejoinder, to which no regard was given, but judgment was given on demurrer to this for defendant, for that the replication was bad, being only that plaintiff endeavoured where it ought to be, that plaintiff had assaulted or beaten the horse, 2. Lut. 1481.

Justification, because plaintiff did not pay for what he had, Cl. Aff. 100.

Justification in assault, to wit, gently touching his hat in a familiar conversation, Bro. Vad. 484.

Justification in defence of his horse, Bro. Vad. 486. To put plaintiff out of his lodging, Bro. Vad. 487. To cause plaintiff to desist from pounding (*campanum*) in the night, *Ibid*.

That defendant is a lapidary, and retained by M. to build a wall, defendant *molliter manus imposuit* on plaintiff, Bro. R. 486. Replication, that plaintiffs are jointly seised with M. of lands on which wall was built.

That defendant, in the name of a distress for rent unpaid, took a cow, which plaintiff

IN THE CIVIL DIVISION.

tiff would rescue; *per quod molliter manus imposuit*. Replication, *de injuria*, *Mo. Int.* 984. Of goods and chattels in the house by defendant's wife, *Bro. M.* 384.

Justification, turning plaintiff out of his house upon coming thither to disturb him. *Bro. Vad.* 415. 418. Replication, *de injuria*, *2. Mo. Int.* 313.

That defendant was a curate, and plaintiff talked so loud in the church as to prevent reading prayers, for which defendant upbraided him, and desired him to cease, and he refused; *per quod molliter manus imposuit*, and put him out of the church. Replication, *de injuria*, *Ra.* 612.

That plaintiff's father held lands of defendant by knight's service, and defendant *molliter manus imposuit* upon plaintiff *within age* to seize him. Replication, that plaintiff's father held the lands in socage; and traverses that he held by knight service, *Ra.* 649. *Upp.* 212.

Plea (to trespass, for taking and carrying away the daughter and heir), that the father held lands of defendant by knight service, who took the daughter *within age*. Replication, *de injuria propria*; and traverses tenure, *Ra.* 649.

That J. being seised of an ancient warren, made defendant his warrener; that plaintiff entered into the warren, and made an assault on defendant, who *in the execution of his office* defended himself; and traverses that he is guilty in any other manner or elsewhere out of *B. Tho.* 397.

That defendant being in company at a public-house, the plaintiff came into the company, and refusing to withdraw *molliter manus imposuit*, and turned her out. Replication, *de injuria*, &c. and issue, *2. Mo. Int.* 313.

5. SON ASSAULT DEMESNE, In Defence of

1. Self.
2. Third Person.
3. Specially with an *Irâ Motus*.

}

(24.)

VOL.

IX.

Page

35. Plea (to declaration for an assault, and dragging plaintiff over a wall), that after requiring plaintiff to desist from pulling down the wall, plaintiff made an assault on defendant, whereupon he defended himself. (See Declaration, p. 33.)
47. Plea of *son assault demesne* to declaration for assaulting plaintiff's wife. (See Declaration, Index, ante, and p. 46.)
342. Plea of *molliter manus imposuit* in defence of self; Plea to tearing clothes, *son assault demesne* in defence of self, and to assault only. (See other pleas, p. 340, &c.) Replication, *de injuria*, and similiter to all the pleas.
358. Plea (to trespass for assault), that plaintiff attempted to shoot with a gun at defendant, *son assault demesne* in defence of self, and *son assault demesne* making an assault, with an *irâ motus* in defence of his master, and in his aid, &c. and to prevent mischief, and in defence of his master, took the gun and deposited it with

VOL. IX.

M m

INDEX TO LEADING TITLES OR HEADS

Vol.
IX.
Page

- a magistrate *for the use* of plaintiff, as he lawfully might do. (Several pleas, *vide* p. 357.)
366. Plea to declaration for an assault by husband and wife on plaintiff; 1st not guilty; 2d, for the wife, *molliter manus imposit* to turn him out of the house; 3d, similar to first Count for husband and wife, *molliter manus imposit* by wife to turn him out, plaintiff assaulted her, and both defendants *in her defence* defended her; 4th, by wife alone in defence of her husband, with an *ira morus*, &c. (Qu. and see the cases cited 5th as *servant*, and in defence of her husband. Qu.)
369. Replication to plea of *son assault demesne*, that defendant was beating plaintiff's child, and that the assaulting of defendant (as stated in the plea) was in consequence of the defence of the child.

PRECEDENTS IN BOOKS OF PRACTICE, REPORTERS, &c.

- Plea, *molliter manus imposit* in defence of his wife, the plaintiff striking, &c. the horse whereon he rode, - 2. R. P. C. B. 455
- Plea, *son assault demesne*. Replication, *de injuria*, &c. - 1. R. P. B. R. 180
- Son assault demesne* in defence of *sefs*. Replication, *de injuria*.
Rejoinder, - 1. R. P. C. B. 150
- Plea of *son assault demesne* in defence of self to action of trespass for an assault. Replication, *de injuria*, &c. - Pl. Ad. 447
- Plea to assault and battery brought by the husband and wife to the force, &c. not guilty; to residue, that one J. C. was plaintiff in an action against the husband in the mayor's court of Guildford, on which a plaint issued to one of the defendants to arrest him, who took him into custody, from whence he escaped; whereupon he, together with the other defendant in his aid, retook him on fresh pursuit, upon which the wife *son assault demesne* to rescue the husband, against whom they defended themselves, which is the same assault, - Lill. Ent. 129
- Plea of *son assault demesne* to the trespass on the *assise* of defendant's master in endeavouring to take away several hogheads delivered to the master, a carrier, to carry, which the wife prevented, - 2. Lill. Ent. 456
- Plea of *son assault demesne* to battery on husband and wife, *W. Ent.* 1007. Replication, *de injuria*, *Brs. R.* 482.
- Plea of *son assault demesne*, plaintiff took defendant's bullock, which defendant endeavoured to get; *pro quod* servant made an assault, *4to.* 390.
- Plea to trespass against three, of *son assault demesne* by two severally, by the other defendant *molliter manus imposit* upon plaintiff and defendant to separate them. Replication; to the two *de injuria*, &c. severally, and demurrer to the other, *Tho.* 408.
- Plea, *son assault demesne*. Replication that plaintiff, by virtue of a warrant on a *la. reata*, peaceably arrested defendant, on which defendant made the assault upon him, *Tho.* 385. Rejoinder to similar replication, that plaintiff made the assault otherwise and in other manner than in the plea, *Ibid.* 394.

Plea,

Plea, not guilty by one, *son assault demesne* by the other, *Tho.* 335.

Plea (to trespass and assault against R. and T.) by R. *son assault demesne*, by T. *molli- ter manus imposuit* on plaintiff and R. fighting to *separate ibem*. Replication, *de in- juria*, &c. *Tho.* 336 339. 394. 2. *Bro.* 143.

Son assault demesne special concerning a dog. Replication, *de injuria*, *Ra. Ent.* 464.

To preserve peace, and defend his son, *Cl. Ass.* 90.

Justification in defence of the master, *Bro. Vad.* 484.

Plea of *son assault demesne* specially pleaded in preservation of quiet possession of goods levied by virtue of a writ of our lord the king issuing out of the exchequer *Tho.* 399.

Plea of *son assault demesne*, and for his own defence. Replication. that the plaintiff was possessed of an house and shop, and the defendant entered and reviled him, whereupon the wife by command *molli- ter manus imposuit*. Demurrer. for that plea neither admits, nor traverses, nor answers to plea, *Lev. Ent.* 217. *Cl. Ass.* 107. *Bro. Vad.* 487. *Pl. Gen.* 633.

Special *son assault demesne* in defence of possession of defendant's house, *Bro. Vad.* 413. Demurrer, *Han.* 215. Replication, *de injuria*, &c.

Plea, *son assault demesne*. Replication, that defendant digging plaintiff's soil without leave, and refusing to be gone, she gently struck him, whereupon he did assault and beat her, &c. Replication *de injuria*, &c. *Bro. Vad.* 446.

Plea of *son assault demesne*, *Ra.* 611. *Co. Ent.* 644. *Vet. Int.* 19. *Her.* 34. Assault on servant, *Ra.* 613. On servant, that he was not retained, *Ra.* 674.

Plea to trespass and assault at D. that plaintiff made the assault on defendant at S. with *continuando* of assault to D. Replication, *de injuria* at D. *Ra.* 611. *Vet. Int.* 57.

Son assault demesne against husband and wife for the assault of the wife, *Her.* 393. Against husband and wife, not guilty by husband, *son assault demesne* by the wife, 1. *Br.* 188. *Upp.* 214.

Plea, not guilty by one, *son assault demesne* by the other, *Ra.* 612.

Plea, *son assault demesne* by one, abatement for misnomer of the other, *Ra.* 610. *Pitt. Int.* 43. *Son assault* by one abatement, no such person by the other, *Ra.* 611.

To the trespass, common bar; to battery, *son assault demesne*, 1. *Br.* 400.

Plea to trespass against A. B. C. and D.; A. and B. say, that B. is A.'s son, and that plaintiff made an assault on A. and that he and A. defended him, C. and D. that they were *const. bles*, and seeing plaintiffs make an assault upon A. would arrest plaintiff, who made an assault upon them, they defended themselves. Replication, *de injuria*, *Ra.* 612.

Plea, *son assault demesne*. Replication, that defendant made an assault on plaintiff's wife; and plaintiff, to assist him laid his hands upon defendant who *ira motus* made an assault on plaintiff to beat him. and issue, *Ra.* 612. *Vet. Int.* 155.

That defendant kept a school, and that plaintiff was his scholar, whom he chastised for misconduct. Replication, *de injuria*, *Ra.* 613.

MODERATE CORRECTION.

Plea (to trespass, assault, and menaces upon S. servant of plaintiff, against A. and B.) not guilty by A.; by B. that S. and many others made an assault upon him, who to *defensa himself* struck them again; and to *menaces*, that he said he would bring an action against S. and others for the said assault; and traverse that he is guilty of the menaces against his life. Replication to the assault, *de injuria*, and that defendant is guilty of the menaces as in the declaration, *Ra.* 613. *Vet. Int.* 161.

INDEX TO LEADING TITLES OR HEADS

Plea by one, *son assault demesne*; by another, justification in defence of his father; and a third, *to preserve peace*, 2. *Mo. Int.* 312.

That plaintiff being an apprentice to defendant, departed without leave for several days, and behaved himself so ill to his master, refusing to do his necessary work, and that defendant *chastised him as he might lawfully*, and detained him in his house to do his work. Replication, *de injuria*; issue, 1. *Bro.* 219.

Son assault demesne, and replication; *de injuria propria*, *Cl. Ass.* 25. *Bro. Vad.* 454. 1. *Inst. Cl.* 217. 345. 2. *Mo. Int.* 310. 312. *Pl. Gen.* 617. *Cl. Man.* 395. *Tho.* 426. Not guilty to part, *son assault* to residue, *Cl. Ass.* 135. One not guilty, the other *son assault*, *Ibid.* 75. 143.

Plea, *son assault demesne* by one; by another, justification in defence of his father; third, for preserving the peace.

That plaintiff made an assault upon defendant with a piece of wood, and defendant, to defend himself, took it out of his hands, and delivered it to the constable to keep the peace. Replication, *de injuria*, &c. *Co. Ent.* 651.

OTHER PLEAS IN TRESPASS.

Plea in abatement of a servant of a clerk in chancery. Demurrer. Judgment for plaintiff, for that in the plea it is not averred, "and this he is ready to verify," 2. *Lut.* 1465.

Plea special to the assault to *menaces*, that he said that he would prosecute his suit in law for the assault on plaintiff; and traverses that he is guilty of the menaces against his life, &c. *Ra.* 617. *Vet. Int.* 161.

Plea in abatement (to declaration against two, for taking a hoghead of cyder) by outlawry after judgment. Demurrer, and judgment for plaintiff, on exception that the plea is, that *he* (where it should be *they*) ought not to be compelled to answer to the writ and declaration being shewn for cause, 2. *Lut.* 1529.

4. NEW ASSIGNMENT. (25)

Vol.

IX.

Page

9. Replication to plea to declaration for assault and battery; to the first plea, *similiter*; 2d, *de injuria*, &c.; to the 3d, new assignment; to the 4th, *de injuria*, &c. (*See* p. 4, 5, &c.)

33. New assignment to plea that trespasses in the declaration mentioned were done and committed at different times and on different occasions than in plea mentioned. Plea thereto, 1st, not guilty; 2d, leave and licence. Replication, issue on the licence. (*See* the Pleadings, p. 21, 22, &c.)

39. Replication to plea to declaration for taking plaintiff's goods in execution, *de injuria* and new assignment, that there was no judgment to warrant the writ, &c.

51. Plea to new assignment, setting out the record, &c.

52. Replication to plea to new assignment. (*See* Declaration and Pleadings, p. 87.)

100. Replication and new assignment to plea to declaration for entering house, making a noise, &c.; that defendant entered at other times and with more force than was necessary. To 2d plea, *de injuria*, &c. Plea to new

assigna-

Vot.

IX.

Page

- assignment, general issue, and similiter. (See Plea, Licence in Law, *ante*, and declaration and plea, p. 98, 99.)
122. Replication and new assignment to plea of justification under a *fi. ri. facias* and warrant by the sheriff's officer, that trespasses were committed at other times. (See Plea, p. 126, with other pleas.)
178. Plea to novel assignment, and issue. (See p. 173. 176.)
187. New assignment (to common bar, and colour given) that plaintiff brought his action against defendant for entering a close called A. and not close B. as supposed in the plea, p. 184. Replication. &c.
188. the plea, p. 184. Replication. &c.
192. New assignment to pleas of justification, right of common of pasture; that *locus* is another and different close from the close mentioned in defendant's plea, and not parcel of the manor. Rejoinder, taking issue on the traverse. Plea to new assignment; 1st. General issue; 2d, that it is the same close, and stating the abutments. Replication to new assignment, similiter to general issue. Rejoinder and *postea*. (See p. 189, &c. for pleadings and *postea*.)
243. Replication, new assignment, that plaintiff brought his action not only for trespasses confessed, but also for breaking close, treading down corn, &c. *otherwise than using a way*; and as to trespasses confessed, *de injuria*, &c.; traverse of right of way. Rejoinder, *non cul.* to new assignment; issue on the traverse.
244. *de injuria*; *traversing highway* and right of way, with *new assignment*. Rejoinder, issue on the traverse, and *non cul.* to new assignment on plea, &c. p. 236.
238. Replication, new assignment to first plea, and *de injuria*.
239. Plea to new assignment. Replication to plea to new assignment, protesting *no such way*. (See Plea, &c. p. 244.)
248. Replication and new assignment to plea to trespass for entering closes, &c. that inhabitants of a parish have by custom to perambulate parish boundaries every year to mark the limits. (See Plea, p. 320.)
249. Plea to new assignment. Replication to plea to new assignment, not only, &c. but for imprisoning on other occasions, and confining him in a damp cellar. To 2d plea, *de injuria*. (See Plea, &c. p. 348.)
349. Plea (to trespass for entering close, consuming turnips, and with carriages subverting soil), that A. B. was seised in fee of a piece of land which he demised to the defendant, in right of which he was entitled to a way over *locus*; and because the plaintiff had ploughed up the usual way, *had assigned* another, whereupon the defendant entered the last-mentioned way with horses and carriages, and in so doing did unavoidably,

INDEX TO LEADING TITLES OR HEADS

VOL.
IX.
Page

PRECEDENTS IN
BOOKS OF PRACTICE,
REPORTERS, &c.

385. &c. Another plea for *common of pasture*, setting out a particular custom. Various other pleas. Replication to second plea, traverses custom. 3d plea, traverses custom; 2d plea, protesting no such way; traverses *assignment of another way*. To third plea, protesting no such way *in other premises*; traversing assignment of another way. To fourth plea, *de injuria*, &c. and issue to fifth plea, protesting no such custom (as set out) *in other premises*, traverses custom there. To sixth plea, protesting no such custom in lands lying *dispersedly* in, &c. and defendants *de injuria*, &c.; traverses custom to seventh plea, *de injuria*, &c.; traverses custom to eighth plea, *de injuria*, &c. traverses custom. New assignment to all the pleas, bill exhibited not only for all trespasses to be justified, but for other trespasses at other times, &c. Rejoinder, plea to new assignment; 1st, not guilty; 2d, custom prescribes in a *que estute* to have common of pasture after corn cut, &c. and *bained up and seised off* to prevent cattle straying; states demise to defendant, who as servant, &c. entered with, &c. 3d, similar. Replication to plea to *new assignment*, and issue to both pleas.
396. New assignment of a trespass in a different part of the close
397. called the C. to wit, thirty-six acres thereof, part of the
401. glebe land of the rectory of M. of which plaintiff was tenant in possession. 2d Count of new assignment, adopts the 3d Count of declaration; as to residue of trespass in the 2d plea, plaintiff admits that the place called the C. contains one hundred and forty acres, and except thirty-six thereof is the freehold of defendant; but says, that J. D. before the said time when, &c. was tenant for life of said close, except, &c. and defendant was seised in freehold of the reversion, and demised by lease of J. D. and *confirmation* of defendant to plaintiff for twenty-one years, plaintiff entered and was possessed during the term; states a custom in the parish of M. for every way-going tenant to enter and take his way-going crop, and claiming the corn in the first count as such, and that defendant *de injuria*, &c. took it. Replication to 3d plea, as to cutting and carrying away the corn in the 5th count, and the goods, &c. in the 6th, except the hay and grass, parcel thereof, same as replication to the second plea. States a similar custom in the parish of H. *de injuria*, &c. New assignment as to the seizing, &c. of the goods, &c. in the sixth Count, except the hay and grass, parcel thereof, says, that those goods, &c. were no part of the goods, &c. in the third plea mentioned. Rejoinder, giving judgment by *nil dict* on the first new assignment, protesting against the sufficiency of the first replication; traverses the first custom as set out in the first replication, concludes to the country. Similiter, similar. Rejoinder to

Pl. Aff. 407

2. T. R. 172

1. T. R. 562

second replication; traverse of the custom in the second replication. General issue of not guilty to the last new assignment. Similiter. Award of *venire*. Award of *nisi prius*. New assignment (to plea by two defendants to trespass for false imprisonment, an arrest on the mesne process as bailiff), that defendant voluntarily released plaintiff with the consent of the other defendant (plaintiff in the original suit), and afterwards imprisoned plaintiff.

New assignment, that defendant used the way, and fixed waggon frame ways over plaintiff's closes at other times and on other occasions, and for other purposes than mentioned in indenture and grant of the waggon way pleaded, and repaired and amended at improper and unseasonable times not mentioned in the grant; and that as to another way in second plea pleaded, no part of it was within the premises mentioned in the said indenture,

Not guilty to new assignment, *Ra. Ent.* 632. *Co. Ent.* 289. 2. *Co.* 18. Special plea to new assignment, *Ra. Ent.* 608. *Her.* 707.

To part of trespass, 3. *Br.* 401.

That defendant, leased as well of the close in the new assignment as of the adjoining close, demised the close in the new assignment, except the privilege of making hedges, and carrying away wood, *Wi. Ent.* 997. *Her.* 723.

Plea as to part of trespass in the new assignment, not guilty, and to residue tender of amends, 2. *Bro.* 278. As to part of lands in the new assignment, prescribes in right of way as to the other part, *licence*, 3. *Br.* 441.

Plea by one defendant to trespass in one piece of land in the new assignment, not guilty, and special plea to another part; the other defendant to trespass in piece of land, not guilty, to the other a special plea, *Co. Ent.* 652.

Plea to trespass against A. B. C. and D. severally not guilty to part after new assignment, and to the other part severally plead specially. Repliation, several to pleas by A. B. and C. and two replications to plea of D. Surrejoinder to replications by A. B. makes three surrejoinders, C. four, and D. four to the replications. Surrejoinder to plea of A. and makes three surrejoinders to plea of B. and four to plea of C. and three to plea of D. Defendant demurs to two surrejoinders, and plead to issue to some, and plead over to others. Demurres to rebutter, *Co. Ent.* 280.

New assignment of a messuage called, &c. *Wi. Ent.* 982. Of messuage or inn called the George Inn in S. *Bro. Vad.* 437. One house in S. and one close called G. and another close called M. *Wi. Ent.* 985. Of messuage and lands, 988. 2. *Co.* 5. Of several messuages and lands, *Co. Ent.* 272. Of messuage and close containing, &c. *Co. Ent.* 645. Of close called Tidpole, *Wi. Ent.* 992. Called Sling, *Tho.* 323. Of one close called C. containing, &c. *Wi. Ent.* 663. One cartilage, 3. *Br.* 474. Two pieces of pasture called, &c. 1. *Bro.* 354. Of land, whereof one, &c. *Wi. Ent.* 971. Of a piece of land called, &c. *Co. Ent.* 648. Two pieces of land, 652. One close in D. containing, &c. 2. *Bro.* 252. 254. 256. 275. Of five acres of land called I. abutting, &c. 278. Of three acres and an half, 256. Three acres called P. *Bro. Mat.* 377. Of four acres called S. in the parish of, &c. *Wi. Ent.* 995. Of a piece of land lying, &c. in the pasture close, and another piece of land, 1. *Bro.* 331. Of one hundred acres of marsh lying, &c. *Ra.* 608. *Pla.* 253.

437. Of land, *Ra.* 624. Of land called L. and forty acres of pasture called M. *Ab.* 437. Of two hundred acres of land called A. B. C. &c. *Upp.* 186. Three acres of meadow called B. and several fishery in water of A. on the east side of those three acres of meadow, *Dy.* 267. Of moiety of parcel of land in the bar abutting, &c. *Vet. Int.* 235. Of two hundred acres of furze, parcel of two hundred and fifty acres in the bar, *Upp.* 138. One close of land called, &c. 2. *Bro.* 247. Called *Millfield*, 2. *Lut.* 1468. Meadow called *Whitehead*, and another called *Ven-bayes*, 2. *Bro.* 259. 262. *Wi. Ent.* 967. Land, 2. *Bro.* 271. 273. Pasture containing &c. and another close in B. and another in D. 275.

Of a piece of land containing, &c. *Tbo.* 317. Close of pasture called W. L. *Wi. Ent.* 961. Two *selionibus* of pasture containing, &c. Half an acre of land called a half parcel of a certain great meadow called B. *Bro. Vad.* 424. Close, &c. *Bro. R.* 501. Close of pasture, &c. 503.

Plea of not guilty to new assignment, 1. *Bro.* 331. 2. *Bro.* 276. *Ro. Ent.* 457. Not guilty to *pari*, common bar to residue and new assignment there, 1. *Bro.* 348. 2. *Bro.* 252. 254. 271. 273. 3. *Br.* 400. 474. Not guilty to part of new assignment, special plea to residue, 2. *Bro.* 271. 276. New assignment to part, special bar to residue, *Co. Ent.* 681.

Plea to new assignment, that the close and *loci in quibus* were within the parish of S. K. and were titheable, 2. *Bro.* 271.

Plea special under a demise for year, and *gives colour* to plaintiff by deed of demise for life. New assignment thereon, and same plea to new assignment, *Wi. Ent.* 1000. *Her.* 715.

New assignment after special plea to the whole trespass, and not guilty to the new assignment, *Ra.* 579. 626. 641. 647. *Vet. Int.* 100. 191.

Plea special of title. New assignment and plea in bar thereto, and prescribes in right of way, *Upp.* 186.

Replication to special plea, that *loci in quibus*, &c. are as well the *locus* in the bar as the other called C. and the Brow of the Hill, &c. Special replication to defendant's several pleas, *Upp.* 148.

Plea to new assignment, is called as well by one name as another, lying in said K. being a hamlet within the parish. 3. *Br.* 418.

PLEAS in

1. DENIAL OF TRESPASSES.

1st, General.

2d, Special, by denying Plaintiff's Marriage.

2. DISCHARGE.

PRECEDENTS in
BOOKS of PRACTICE,
REPORTERS, &c.

I. R. P. C. B. 148

Plea, not guilty in trespass and in assault,

Plea, 1st, not guilty to the whole. 2d, That the trespasses, &c. in the first, second, and third Counts are the same, and all relating to the close in the first Count, which is defendant's freehold, therefore he and the other defendant as his servants justify, &c. except as to thirty-six acres thereof.

3d Plea same as 2d to fifth and sixth Counts, on sitting the fourth,

Pl. Ass. 400

Plea,

IN THE CIVIL DIVISION.

- Plea, not guilty, 1. *Bro.* 218. 345. 2. *Bro.* 125. 282. 2. *Lut.* 1302. *Clif.* 728. 789. *Bro. Met.* 382. *Cl. Aff.* 166. 2. *Mo. Int.* 310. 1. *Ing.* *Cl.* 64. 261. *Cl. Mag.* 393. *Har.* 2:2. *Tbo.* 423. 426. *Ra. Ent.* 661. 667. 669. *Co. Ent.* 76. At the suit of the king, *Ra. Ent.* 662. Not guilty by one, special justification by another, 2. *Bro.* 282. Special justification and traverse, and traverses that he is guilty in the form in the declaration, *Ra. Ent.* 617.
- Plea, that trespass was between the disseisin and re-entry, *Ra. Ent.* 629. 648.
- Not guilty, except with certain cattle at certain times on a special prescription of common, *Co. Ent.* 675.
- Plea, by one to part of trespass, and by the other to the whole, not guilty, *Ra. Int.* 188.
- Not guilty to part, and as to eating the grass with sheep defendant pleads that servant keeping the sheep slept *sub subo*, per quod the sheep strayed into the *vicum in quo*, and servant waking chased them out. Plaintiff prays judgment, but *refert* till trial had, *Ra. Ent.* 637.
- Plea, not guilty by A. of trespass, (to a declaration against A. and B.) *Ra.* 340.
- Not guilty to part, and pleads over to the residue, *Lev. Ent.* 175. 178. 188. 191. 194. 196. 3. *Lev.* 88. 109. 194. 1309. *Tbo.* 432.

1. Accord and Satisfaction.

VOL.

IX.

Page

13. Plea (to declaration for *crim. con.*) accord and satisfaction. Replication, that defendant was to have entered into a bond, &c. but never complied with the agreement. (*See Declaration, same page.*)
268. Plea (to declaration for entering close, spoiling grass, carrying away water, &c.), that defendant delivered a quantity of straw equal to straw taken in satisfaction, which plaintiff accepted. (*See other Pleas.*)

2. Release.

15. Plea to declaration for a violent assault of a general release.

RELEASE—ACCORD—JUDGMENT RECOVERED—ARBITRATION.

PRECEDENTS IN
BOOKS OF PRACTICE,
REPORTERS, &c.

Plea of release in trespass, *puis d'avein continuance* put in at the assizes.

Plea (to trespass for breaking and entering plaintiff's close), that the plaintiff and defendant agreed to settle all matters in dispute, and to bind themselves in a penalty not to sue each other. Demurrer.

Plea (to trespass for taking plaintiff's cattle), as to force, not guilty; to residue, a judgment recovered by default in the wapentake of Strafforth, in Yorkshire, for the same

Bull. Ni. Pri. 310.

5. T. R. 141.

sum,

INDEX TO LEADING TITLES OR HEADS

PRECEDENTS in
BOOKS of PRACTICE,
REPORTERS, &c.

- Sum, execution sued out, sale of cattle, and a tender, with *uncore prisf* of the overplus. Replication, takes the overplus, and *de injuria*, &c. to the residue, - 2. Lilk Ent. 444.
- Plea (to trespass for taking away plaintiff's wife, *per quod*), a submission to an award, and seven pounds awarded, together with two third parts of the costs; which seven pounds were tendered, and plaintiff refused, because no bill of costs was produced. Demurrer, and joinder, 3. Com. Rep. 328.
- Plea, that trespass was done by defendant and E. between whom and plaintiff *accord* was, that E. should pay plaintiff five marks, which he did. Replication, that trespass was done by defendant only, and traverse that it was done by defendant and E. *Ra. Ent.* 627.
- Plea, that there was an *accord* between plaintiff and defendant, that defendant should pay, to one T. by plaintiff's appointment, twopence in *satisfaction* of trespass, which he paid. Replication, *nul tiel* agreement, *Wi. Ent.* 961.
- Plea of release of one to trespass against two for taking goods, *Wi. Ent.* 1005.
- Accord between plaintiff and defendant, that defendant should pay ten shillings in *satisfaction* of trespass, which he paid, and should return the *galrum* plaintiff lost, or pay sixteen shillings for it, with *uncore prisf*, *Pl. Gen* 623.
- Accord was as well of trespass in declaration as of all other trespasses, through the intervention of friends, that defendant should pay plaintiff fifty-two shillings, which he did, *Tho.* 398. Should give each other *lagenum* of wine. Replication, *nul tiel* accord, *Rass.* 627. *Upp.* 215. 221.
- Accord was of trespass in declaration, that defendant should give five shillings in full *satisfaction* of trespass, and should pay ten shillings in satisfaction of costs, which plaintiff received, *Tho.* 322. 428.
- Accord between plaintiff and defendant, through the interference of friends, of trespass in the declaration, that defendant should give plaintiff a door, which he did, *Tho.* 305. Similar *accord*, and eighty shillings given for *amends* for trespass and satisfaction of costs of suit. Demurrer, *Bro. R.* 490.
- Discharge as to part of trespass, in consideration defendant discharged plaintiff of all trespass before then brought, 2. *Bro.* 145.
- Plea in abatement against five; of *mishomer* by two, and by the others that plaintiff gave a *release* to one of them after the trespass committed, 2. *Bro.* 151.
- Plea to trespass and imprisonment, that trespass was defendant and J. to whom plaintiff released, *Tho.* 335.
- Accord, that defendant should brew a bushel of malt into beer for plaintiff as a recompence for the said trespass and all other between plaintiff and defendant, and plaintiff received, *Tho.* 386.
- Accord between plaintiff and defendant by J. of the said trespass, that defendant should pay plaintiff forty-five shillings in *satisfaction*, and plaintiff received it, *Tho.* 387. Similar plea, and replication, that A. should only pay for the assault committed by himself, and traverses for the other, and issue, *Bro. Fad.* 444.
- Accord after trespass committed, that defendant should pay three shillings in *satisfaction* of all trespasses before then brought, which plaintiff received, and traverses that he is guilty after. Replication, protesting no such accord. For plea, that trespass was done after trespass, *Wi. Ent.* 962.
- That H. and plaintiff were indebted to defendant in twenty pounds, and H. was possessed of the goods, which he delivered to plaintiff to keep, and afterwards by his servant gave goods to defendant in *satisfaction* of the debt. Replication, that plaintiff was possessed of goods until defendant took them, and traverse that the property of the goods was in H. *Ra.* 615.

IN THE CIVIL DIVISION.

chap.

That plaintiff, bound to defendant in twenty pounds, delivered goods to defendant in *satisfaction* of the debt. Replication, *de injuria*, &c. and traverses the delivery, *Ra.* 615.

Accord pleaded in bar, *Cl. Aff.* 96.

3. Autre Action, &c.

Plea, not guilty to part; to residue, a judgment obtained by defendant against plaintiff in another action for the same trespass, with averment of the identity. Demurrer, and it seems judgment for defendant, notwithstanding it was objected that the prior judgment did not go to the merit or matter of this action, 2. *Lut.* 1414.

Plea to bill of trespass and assault, that plaintiff filed another bill against defendant for same cause of action, *Cl. Aff.* 437.

Plea (to trespass against three), to all the trespasses except the breaking the closes and house, eating up corn and grass, and treading down grass, and taking goods, *non cul.* by all. And to those trespasses one defendant pleads that he paid plaintiff twenty shillings in full *satisfaction* of the said trespasses. And to the trespass in *pitetto*, *non cul.* by two, and another pleads *defect of fences*. And to breaking house, plea by two that they came to visit plaintiff at his house. And to residue *non cul.* by all, *Wi. Ent.* 997.

Plea (to goods taken in the custody of J. and T. executors of R.) of release of all the goods. Rejoinder, *non cul. Wi. Ent.* 1005.

4. Statute of Limitations.

Plea (to count for false imprisonment at Saint George, in parts beyond the seas, viz. at London, until payment of a fine of two hundred pounds, and also taking goods, &c.), that the cause of action to all except, &c. did not accrue within four years; and as to those did not accrue within six years. Demurrer, and held repugnant to say that the thing was done beyond sea, viz. at London, and that the proviso in the statute does not extend to this case when defendant is beyond sea, and leave given to discontinue, 2. *Lut.* 946.

Plea, statute of limitations. Replication by original sued out and outlawry in London, and defendant stood outlawed till it was reversed within the year, and then the plaintiff declared defendant after *oyer* of the original demurrer, because it is not shewn when the original was sued out, nor when outlawry was reversed. Judgment for plaintiff, *Lev. Ent.* 203.

5. Award.

Plea (to trespass by an executrix and her husband for taking away the goods of the testator), that she and the plaintiff, after trespass committed, and before the action brought, submitted themselves to *arbitrament*, and an award that either should acquit each other, and should release, &c. whereupon the defendant did release. Replication, arbitration made, no award. Demurrer, and joinder, *Bro. Vud.* 428.

Award pleaded, *Cl. Aff.* 178. Replication, arbitrators were discharged. Rejoinder, and issue on being discharged, *Bro. Vud.* 453.

That plaintiff and defendant submitted to an award which was made that defendant should pay plaintiff eighteen shillings in *satisfaction* of the trespass, which plaintiff received, and traverses that he is guilty after the award. Replication, and issue on the traverse, *Tho.* 376.

6. Tender

INDEX TO LEADING TITLES OR HEADS

6. Tender of Amends.

Vol.
IX.
Page

349. Plea to trespass by officers of excise of *tender of amends*, stating month's notice, and that within the month, &c. Replication, *similiter* to 1st plea. And to 2d, that amends were not sufficient.

Plea, tender of amends, and plaintiff refused, 1. *Bro.* 331. *Wilk.* 287. Similar plea. Replication, protesting that, &c. that amends were offered for another trespass, and traversed that he tendered for trespass in the new assignment, *Wi.* 995. Similar plea as to part, 1. *Bro.* 332. 2. *Bro.* 278. *Tho.* 304. Replication, did not tender sufficient amends, 1. *Pro.* 333.

Plea, that trespass was done by defendant and one R. and that R. paid plaintiff one hundred shillings in full satisfaction, which plaintiff received, 2. *Bro.* 258. That defendant gave to A. twelvepence to pay plaintiff in full satisfaction, which plaintiff received. Replication, did not receive twelvepence in satisfaction, *Ab.* 452.

That defendant tendered plaintiff two shillings and sixpence for involuntary trespass done by cattle in plaintiff's close. Replication, protesting *de injuria*, and that amends were not sufficient. For plea, did not tender, and issue, *Tho.* 304. Replication to similar plea, that amends were not sufficient, *Tho.* 360. 409.

Plea, *non cul.* to part, and disclaimer of title to the premises. For plea, that defendant was seized of a parcel of land near the plaintiff's, and ploughed the plaintiff's land, thinking it had been his own, and before the action brought tendered two shillings amends, and *uncore prist*, which was ample satisfaction. Demurrer, and judgment for plaintiff, *Lew. Ent.* 178.

Replication by plaintiff, pleading tender of sufficient amends to defendant, viz. four shillings and twopence, for his charge of seizing, impounding, proclaiming, and pasturage of a horse for the time it remained in his custody. Rejoinder, that plaintiff did not tender four shillings and twopence for his charges, nor were they sufficient amends. Surrejoinder, and issue on the tender, *Bro. Vad.* 513.

Tender of amends for *cunco's*, running near defendant, and killed by him, 1. *Br.* 167.

Tender of bushel of wheat for involuntary trespass done in the lands in new assignment. Replication, protesting amends not sufficient. For plea, did not tender, 3. *Br.* 482. Similar issue on one shilling tendered for amends before original purchased, 3. *Br.* 482.

Plea, not guilty to new assignment for part; to residue, that defendant tendered eight shillings amends for trespass done in another place, and traversed that he tendered for trespass in the place in the new assignment, *Her.* 720.

Plea to trespass in B. R. tender of amends. Replication, that before tender defendant was arrested by *latitat*, *Her.* 732.

Plea, not guilty to one part, *contra voluntatem* to the other part, and sufficient amends to the residue, *Ch. Ass.* 121.

Replication, tender of amends for impounding, &c. the mare. Rejoinder, did not tender, nor were amends sufficient. Surrejoinder, and issue on the tender, *Bro. Vad.* 513.

Plea to part of trespass, tender of amends; to residue, prescribes in a right of way, 1. *Bro.* 332.

Plea to part, *non cul.*; to residue, tender of amends. Replication, that he tendered for the trespass in the new assignment, *Wi. Ent.* 994.

Non cul. to one part, *non informatus* and tender of amends to the other part, and was not retained in the service to the residue. *Cl. Aff.* 87.

Non cul. to one part, not wilful to another part, and sufficient amends to the residue, *Cl. Aff.* 121.

Plea to part, *non cul.*; to residue, that cattle entered into *locum in quo* against defendant's will with defendant's cattle, and traverses that defendant chased plaintiff's cattle in the sheep walk, *7bo.* 462.

Plea, *non cul.* to all except breaking the close, treading down grass, prostrating gates, and carrying away pieces of wood by one defendant, and as to breaking, &c. both plead; and to taking wood one only pleads, 1. *Bro.* 348. *Co.* Ent. 651.

Non cul. to *vi et armis*, and to all the trespasses except breaking the close and eating up grass with sheep, and a special plea thereto, *Ra. Ent.* 605.

Non cul. to *vi et armis*; to residue, (*actio non*); because *locus* contains five acres, and as to three acres, special plea; and to the two others, *liberum tenementum*, *Ra. Ent.* 647. Similar plea, without *actio non* in the beginning of the plea, *Plo.* 164.

Plea to trespass in one vill, *non cul.* to trespass in another. Special plea, *Int.* 154.

Plea to trespass on several lands by several titles, *Co. Ent.* 660. 1. *Co.* 107. Trespass for breaking close, and assault; several special pleas thereto, *Ra. Ent.* 629.

Plea by one to all, and by the other to all except first, *non cul.* and to that he justifies, *Ra. Ent.* 614.

SCIRE FACIAS.

(PROCEEDINGS IN.)

BY ASSIGNEES OF BANKRUPT TO REVIVE.

GEORGE the Third, &c. to the sheriff of Middlesex, greeting: Whereas R. M. and R. G. lately, to wit, in the term of the Holy Trinity now last past, before the right honourable Alexander lord Loughborough and his companions, then justices of our lord the king of the bench at Westminster, by the consideration of the said court, recovered against S. P. late of, &c. as well a certain debt of two hundred pounds, as sixty-three shillings which were adjudged to the said R. M. and R. G. in the same court as well for their damages by them sustained as well by occasion of the detaining that debt as for their costs and charges by them about their suit in that behalf expended, whereof the said S. P. is convicted, as appears to us of record: And whereas we have since been given to understand and are informed in our said court of the bench at Westminster, that before and at and after the giving of the said judgment, the said R. M. and R. G. were partners and joint dealers in trade together, and that after the giving of the said judgment the said R. M. and R. G. became bankrupts within the true intent and meaning of the statutes made and now in force concerning bankrupts, and that all and singular the debts, goods, and effects which were of the said R. M. and R. G. at the time of their becoming bankrupts were, after they became bankrupts, in due manner assigned unto A. B. C. D. &c. and that although the said judgment was so given, yet execution thereof still remains to be made; wherefore the said A. B. C. D. &c. as assignees as aforesaid, to whom the execution of and upon the said judgment ought to be made, and now of right belongs, have humbly entreated us to grant them a proper remedy in this behalf, and we, being willing that what is right and just should be done on this occasion, command you, that by good and lawful men of your bailiwick you make known to the said S. P. that he be before our justices at Westminster in fifteen days of Saint Martin to shew if he has any thing to say or can say for himself why the said A. B. &c. as assignees as aforesaid, ought not to have execution against him for the debt and damages aforesaid, according to the force, form, and effect of the

Scire facias by the assignees of two bankrupts, co-partners, to revive a judgment obtained by them against defendant before bankruptcy.

SCIRE FACIAS AGAINST EXECUTORS.

the said recovery, if it shall seem expedient so to do, and to receive what our justices shall then and there consider of him in this behalf, and have you then and there the names of those by whom you shall give him notice, and this writ. In witness, &c.

Drawn by MR. CROMPTON.

*Scire facias upon
a judgment of af-
fairs quando, &c.
(after revival by
common law
facias) obtained
against execu-
tors upon their
release of bond
conditioned for
the A. B.'s per-
formance of cer-
tain articles of
agreement, set-
ting forth the
indentures, and
assigning breach-
es according to
S. & 9. Will. 3.
S. 10.*

GEORGE the Third, by the grace, &c. to the sheriff of Middlesex, greeting: Whereas C. B. esquire, in the term of the Holy Trinity, in the nineteenth year of our reign, in our court, before us at Westminster aforesaid, by bill, and without our writ, and by the consideration and judgment of the same court, recovered against sir Frederic Grant, bart. J. S. esquire, P. G. esquire, J. M. esquire, and D. E. G. executors of the last will and testament of sir Alexander Grant, bart. a certain debt of fourteen thousand pounds of lawful money of Great Britain, to be levied of the said goods and chattels which were of the said sir Alexander at the time of his death, and which therefore should come to the hands of the said sir Frederic, &c. to be administered, whereof they were convicted, as appears to us of record: And whereas it was afterwards, in Hilary Term, in the twenty-fifth year of our reign, in our said court, before us at Westminster aforesaid, considered that O. B. esquire, executor of the last will and testament of C. B. esquire, should have execution against them the said sir Frederic, &c. executors aforesaid, for the debt aforesaid, to be levied of divers goods and chattels which were of the said sir Alexander at the times of his death in their hands to be administered to the value of the said debt, and which since the rendition of the aforesaid judgment had come to the hands of the said sir Frederic, &c. executors as aforesaid, to be administered, whereof they were convicted, as appears to us of record: And whereas the judgment aforesaid, in form aforesaid, recovered upon a certain writing obligatory made in the said sum of fourteen thousand pounds to be paid by the said sir Alexander, or his executors, to the said C. B. or to his executors, with a certain condition there underwritten, containing therein, amongst other things, that if one A. B. his executors, administrators, and assigns should or did in every respect well and truly observe, fulfil, and keep all and singular the covenants, clauses, articles, restrictions, and agreements, which on the part and behalf of the said A. B. his heirs, executors, administrators, or assigns, were or ought to be paid, done, and performed, fulfilled, and kept, comprised or mentioned in one indenture of release bearing date the twenty-first of January 1766, and made between the said C. B. since deceased, in his lifetime, by the honourable Archibald Sinclair, of the parish of, &c. in the island of Jamaica, esquire, and Samuel Smith, of the same parish, county, and island aforesaid, the true and lawful attornies of the said C. B. in that behalf duly constituted, of the one part, and the said A. B. of the other part, according to the true intent and meaning of the said lease and of the parties thereto, then and in such case the said obligation was to be void, or else to remain in full force and

and virtue: And the said O. B. further says, that the said indenture in the said covenant mentioned was made on the twenty-first day of January 1766, between the said C. B. by the honourable A. S. of, &c. and J. S. of, &c. the true and lawful attornies of the said C. B. in that behalf duly constituted and appointed of the one part, and the said A. B. of the other part, whereby and for the considerations therein mentioned, he the said C. B. by his attornies aforesaid, by the said indenture did demise, lease, set, and to farm let unto the said A. B. his executors, administrators, and assigns, all, &c. &c. [Set out the indenture, the purport of which was, "that C. B. had granted a lease of a sugar estate to A. B. for twenty-one years, at the expiration of which term the slaves, cattle, &c. that should be on the estate were to be re-delivered and appraised by two arbitrators, and if upon such appraisement they were valued at less than in the valuation marked in the schedule A. that then A. B. was to pay the difference, and if on the contrary the said arbitrators valued them at more than is marked in the schedule A. that then C. B. was to pay A. B. the overplus"] as by the said indenture, amongst other things, more fully and at large appears: And whereas before and at the time of the granting of the said lease, and continually from thence until and at the time hereinafter mentioned, the said C. B. was seised in his demesne as of fee of and in the said demised premises, with the appurtenances, to wit, at Westminster aforesaid, in the said county; by virtue of which said demise so as aforesaid made he the said A. B. entered into the said demised premises, with the appurtenances, and became and was possessed thereof, the reversion thereof belonging to the said C. B. and his heirs; and the said A. B. being so possessed, and the said C. B. so seised, afterwards, to wit, on, &c. all the said demised premises, with the appurtenances, and all the estate, right, title, claim, and demand of him the said A. B. of, in, and to the said demised premises, with the appurtenances, for the rest, residue, and remainder of the said term of twenty-one years, came by assignment to the said sir Alexander Grant, by virtue whereof he the said sir Alexander afterwards, to wit, on, &c. entered into and upon the said demised premises, with the appurtenances, and became and was possessed thereof, the reversion thereof belonging to the said C. B. and his heirs; and the said sir Alexander being so possessed, and the said C. B. being so seised, afterwards, to wit, on, &c. all the said demised premises, with the appurtenances, and all the estate, right, title, interest, claim, and demand of him the said sir Alexander of, in, and to the said demised premises, with the appurtenances, for the rest, residue, and remainder of the said term, came by assignment to the said sir Frederic, &c. by virtue whereof they the said sir Frederic, &c. entered into the said demised premises, with the appurtenances, and became and were thereof possessed until the end and expiration of the said term, and the said sir Frederic, &c. being so possessed, and the said C. B. being so seised of the said demised premises, with the ap-
 VOL. IX N n purtenances,

purtenances, he the said C. B. afterwards, to wit, on, &c. at, &c. in, &c. died, after whose death the reversion of and in the said demised premises, with the appurtenances, descended and came to the said O. B. as only son and heir of the said C. B. by virtue whereof he the said O. B. became and was, and still is seised of the said reversion in his demesne as of fee: And whereas the said lease so granted as aforesaid afterwards, to wit, on, &c. ended and expired by lapse of time, and at the end and expiration thereof, to wit, on, &c. all and every of the said demised slaves and their increase, mules, steers, and neat cattle were then living and re-delivered to the said O. B. and all and every the said plantation, utensils, and implements of planting re-delivered, and also the houses and buildings then being on the said demised premises were revalued and appraised by one A. B. and C. D. two indifferent persons, the said A. B. being named by and on the part of the said O. B. and the said C. D. being named by and on the part of the said sir Frederic, &c. as assignees as aforesaid, which said revaluation and appraisement so made by them the said A. B. and C. D. was much less than the valuation in the schedule marked A, to wit, by the sum of five thousand and forty-three pounds of the currency of the island of J. being at the time of the valuation and appraisement aforesaid of great value, to wit, of the value of pounds of lawful money of Great Britain, to wit, at, &c. of all which said premises they the said sir Frederic, &c. afterwards, to wit, on, &c. at, &c. had notice; by reason whereof they the said sir Frederic, &c. as assignees as aforesaid, became liable to pay to the said O. B. the said sum of pounds, according to the form and effect of the said covenant so made as aforesaid; yet the said sir Frederic, &c. as assignees as aforesaid, have not, nor hath either of them (although a month after such revaluation made and notice given has long since elapsed) yet paid or caused to be paid to the said O. B. the said sum of pounds, or the aforesaid five thousand and forty-three pounds currency, or any part, although often since requested so to do, but to pay or cause to be paid the same, or any part thereof, have wholly failed and made default, and the same and every part thereof still remains due and unpaid to the said O. B. executor as aforesaid, contrary to the form and effect of the said covenant in the said indenture contained, and of the said condition of the said writing obligatory of the said sir Frederic in his lifetime in that behalf made as aforesaid, of all which premises we have lately received information from the said O. B. executor as aforesaid, who hath thereupon prayed the execution of the damages aforesaid sustained by reason of the breach of covenant so assigned as aforesaid according to the form of the statute in such case made and provided may be awarded to him, to be levied of the said goods and chattels which were of the said sir Alexander at the time of his death to the value of the aforesaid debt in form aforesaid recovered and upwards, and which have since the rendition of the aforesaid judgment so as aforesaid come to the hands of the said sir Frederic, &c. executors as aforesaid,

and whereout they can and may satisfy the damages sustained by the said O. B. by reason of the said breach of covenant above assigned; and because we are willing that what is just and right should be done, we command you, that by good and lawful men of your bailiwick you summon the said sir Frederic, &c. executors as aforesaid, that they be before us at Westminster on next after , to shew if they, or either of them, have or know any cause or thing to say for themselves why the said O. B. ought not to have his execution against them for his damages aforesaid to be levied of the goods and chattels which were of the said Frederic at the time of his death in their hands to be administered, and which after the rendition of the judgment first above mentioned to as aforesaid came to the hands of the said sir Frederic, &c. executors as aforesaid, to be administered according to the force, form, and effect of the said recoveries and award of execution as aforesaid, if it shall seem expedient to them so to do, and further to do and receive what our said court before us shall then and there consider of them in this behalf; and have you there at the said time the names of them by whom you shall so summon them the said sir Frederic, &c. and this writ. Witness, &c.

E. LAW.

LISTER } MIDDLESEX, to wit. Our lord the king sent to
against } the sheriff of Middlesex closed in these words, to wit, a *scire facias* in
PEARS. } George the Third, &c. to the sheriff of Middlesex, B. R. against
greeting: Whereas William Lister, gentlman, lately in our bail on their re-
court before us at Westminster, by bill, without our writ, and cognizance after
by the judgment of the same court, recovered against Richard *scire facias* re-
Peats thirty-nine pounds of his damages which he had sustained as turned to the
well by occasion of the not performing certain promises and *alias scire facias*
undertakings lately made by him the said Richard to the said Wil-
liam as for his costs and charges by him about his suit in that be-
half expended, whereof the said Richard was convicted, as ap-
pears to us of record; and although judgment be thereupon given,
yet execution of the said damages still remains to be made: And
whereas T. F. of, &c. and J. J. of, &c. heretofore, that is to
say, in the term of Easter, in the eighteenth year of our reign,
in our said court before us at Westminster, came personally and
became pledges and bail, and each of them by himself became
pledges and bail for the said Richard, that if it should hap-
pen that the said Richard should be condemned in the said plea
aforesaid, then they the said bail granted, and each of them for
himself did grant that as well the said damages and costs as should
be adjudged to the said William in that behalf should be made of
their and each of their lands and chattels, and to be levied to the
use of the said William if it should happen that the said Richard
should not pay the said damages and costs to the said William, or
should not render himself upon that occasion to the marshal of the

SCIRE FACIAS AGAINST BAIL.—PLEA.

Marshalsea before us ; yet the said Richard has not yet paid the said William the said damages and costs, nor surrendered himself to the prison of the marshal of the Marshalsea before us, as we have understood from the information of the said William in our court before us ; whereupon the said William hath humbly entreated us that he may have a proper remedy in this case, and we, being willing that what is just should be done on this occasion, command you, that by good and lawful men of your bailiwick you make known to the said T. F. and J. J. that they be before us at Westminster on, &c. next after, &c. to shew if any thing they have or know to say for themselves why the said William ought not to have his execution against them according to the force, form, and effect of the said recognizance, if it shall seem expedient, and further to do and receive all and singular such things which our said court before us shall then and there consider of them in this behalf, and that you have there the names of those by whom you shall make known the same, and this writ. Witness William earl of Mansfield, at Westminster, the twenty-third of January, in the nineteenth year of our reign ; at which day the said William, in his own proper person, came before our lord the king at Westminster, and the sheriff, to wit, A. B. and C. D. sheriff of the said county of Middlesex, at that day returned that the said T. F. and J. J. had not, nor had either of them any thing in their bailiwick whereby or by which the said sheriff could make known to them, or either of them, neither were they, nor was either of them found in the same, and that the said T. F. and J. J. came not, nor did either of them come ; therefore as before it is commanded to the said sheriff by good and lawful men of your bailiwick he make known to the said T. F. and J. J. that they be before us at Westminster on, &c. to shew in form aforesaid if, &c. and further, &c. the same day is given to the said William, at which day the said William came in his proper person before our said lord the king at Westminster, and the said T. F. and J. J. being at that day solemnly demanded, came by A. B. their attorney, upon which the said William prays that execution may be adjudged to him of the debt and damages aforesaid, according to the force, form, and effect of the said recognizance.

Sheriff's return.

Plea, payment.

And the said T. F. and J. J. say, that the said William ought not to have his execution against the said T. F. and J. J. for the damages, costs, and charges aforesaid ; because they say, that the said Richard, after the recovery of the judgment aforesaid in the writ of *scire facias* above mentioned, and before the issuing of the said writ, to wit, on, &c. in the nineteenth year of, &c. paid to the said William the said sum of thirty-nine pounds in full satisfaction and discharge of the judgment aforesaid in the said writ of *scire facias* above mentioned, to wit, at, &c. which said sum of thirty-nine pounds the said William then and there accepted and received in full satisfaction and discharge of the said judgment ;

REPLICATION.—ENTRY ON THE ROLL.

and this, &c. ; wherefore they pray judgment if the said William ought to have his execution against them for the damages, costs, and charges aforesaid.

JOHN CHETWOOD.

This plea of payment is given by 4. Anne, c. 14. s. 12.

And the said William, as to the said plea of the said Thomas and J. J. by them above pleaded in bar, says, that he by reason of any thing therein alledged ought not to be barred from having his execution of the damages, costs, and charges aforesaid against them ; because he says, that the said Richard did not pay to the said William the said sum of thirty-nine pounds in manner and form as the said T. F. and J. J. have above in their plea alledged ; and this he prays may be enquired of by the country.

Michaelmas Term, 23. Geo. III.

MIDDLESEX, to wit. Our lord the king sent to the sheriff of Middlesex his writ closed in these words, George the Third, &c. &c. [Insert the writ of *scire facias* against all four bail] at which day, before our lord the king at Westminster, came the said plaintiff in his own proper person, and the sheriff of Middlesex, to wit, A. B. and C. D. esquires, sheriff of the said county of Middlesex, at that day returned to our said lord the king that the said A. B. C. and D. had not, nor had either of them any thing in the bailiwick of the said sheriff by which the said sheriff could make known to them, nor were they, nor were either of them to be found within the said bailiwick ; and the said A. B. C. and D. came not, nor did any or either of them come ; therefore as before it was commanded to the said sheriff, that by good and lawful men of his bailiwick he make known to the said A. B. C. and D. that they be and be before our lord the king at Westminster on, &c. to shew in form aforesaid, &c. and further, &c. the same day was given to the said plaintiff, at which day the said plaintiff came in his own proper person before our lord the king at Westminster, and the said T. F. by A. B. his attorney, comes, and the said A. B. C. and D. although solemnly called, come not ; and the sheriff of Middlesex, to wit, A. B. and C. D. esquires, sheriff of the said county as before, now return, that the said A. B. C. and D. have not, nor hath either of them any thing in the bailiwick of the said sheriff whereby the said sheriff could make known to them, nor are they, nor is any or either of them to be found in the same ; and hereupon the said plaintiff prays execution against the said A. B. C. and D. for the damages aforesaid in form aforesaid recovered against the said defendants according to the force, form, and effect of the said recognizance to be adjudged to him ; therefore it is considered that the said plaintiff have execution against the said A. B. C. and D. for the damages aforesaid in form aforesaid recovered according

SCIRE FACIAS AGAINST EXECUTOR

to the force, form, and effect of the said recognizance by the default of them the said A. B. C. and D.

Drawn by Mr. CROMPTON.

Easter Term, 26. Geo. III.

Scire facias against executors in an action against testator, and who died after interlocutory judgment, and after the return of the writ of enquiry to shew cause,

NUTT, ESQUIRE, ADMINISTRATOR, *against*

LONDON, to

WRIGHT, AND OTHERS. EXECUTORS. } wit. Our lord the king sent to his sheriff of Middlesex his writ closed in these words, to wit, George, &c. to the sheriff of London, greeting: Whereas Joseph Nutt, esquire, administrator, &c. lately in our court before us at Westminster, by bill, and without our writ, impleaded sir James Wright, baronet, being, &c. for this cause, to wit, that whereas } Here set out the declaration verbatim] to the damage of the said Joseph of three thousand pounds; as he said; with this, that, &c.: and such proceedings were thereupon had in our said court before us, that the said Joseph ought to recover his damages by reason of the premises; but because it is unknown to our court before us what damages the said Joseph had sustained by means of the premises, therefore we lately commanded you, that by the oath of twelve good and lawful men of your bailiwick you should diligently enquire what damages the said Joseph had sustained as well by means of the premises as for his costs and charges by him about his suit in that behalf expended, and that you should make appear to us at Westminster, or, &c. last past the inquisition which you should thereupon take under your seal and the seals of them by whose oath you should take that inquisition, and that you should have there then that writ; and the same day was given to the said sir James before us at Westminster aforesaid, as by the record and proceedings thereof in our said court before us at Westminster remaining more fully appears; at which day, that is to say, on, &c. you returned to us a certain inquisition indented in due manner, taken under your seal and the seals of those by whose oath you had taken the said inquisition at Guildhall, in the city of London, in the parish of, &c. on, &c. in the twenty-sixth year of, &c. before you, by virtue of our said writ to you directed, and to that inquisition annexed, to enquire of certain matters in that writ specified, by the oaths of twelve good and lawful men of your bailiwick, who on their oath said that the said Joseph, administrator of all and singular the goods and chattels, rights and credits of M. B. esquire, deceased, in the said writ mentioned, had sustained damages to the sum of one thousand nine hundred and eighty-two pounds by the means in the said writ mentioned, besides his costs and charges by him about his suit in that behalf laid out, and for his costs and charges aforesaid, to the sum of twenty-nine pounds; as by the said writ and inquisition annexed now remaining in our said court before us more fully appears: And whereas after the taking the said inquisition

inquisition so had and taken as aforesaid, and before the return of the said writ and inquisition annexed thereto, on the Saturday next after, &c. to wit, on, &c. in the twenty-sixth year of, &c. the said sir James, at, &c. died, having first duly made his last will and testament in writing, and sir James Wright, son of the said sir James, deceased, and Alexander Wright, esquire, son of the said sir James, deceased, and one A. H. and one A. R. are executors thereof, and have execution thereof, to wit, at, &c. as we have by the suggestion of the said Joseph since understood and been informed; and because we are willing that those things which are lawfully transacted in our court before us should be carried into due execution, we command you, that by good and lawful men of your bailiwick you give notice to the said sir Alexander, A. W. A. H. and A. R. that they be before us at Westminster on, &c. to shew if they have or can say any thing for themselves why the damages aforesaid in the said action so as aforesaid assised ought not to be recovered by the said Joseph as administrator as aforesaid against them the said sir James, &c. as such executors as aforesaid, according to the form of the statute in that case made and provided if they should think fit, and further to do and receive whatever our said court before us shall then and there consider concerning them in this behalf, and have there then the names of those by whom you give them notice, and this writ; witness, &c. at which day the said N. in his own proper person, came before our lord the king at Westminster, and the sheriff, to wit, A. B. and C. D. esquires, of London, at that day returned that the said sir James, &c. executors as aforesaid, had not, nor had any or either of them any thing in their bailiwick whereby they could give notice to them, or any or either of them, as by the said writ they were commanded, nor were they, nor were any or either of them found in the same; and the said sir James, &c. executors as aforesaid, came not, nor did any or either of them come; therefore as before it was commanded to the said sheriff, that by good and lawful men of their bailiwick they give notice to the said sir James, &c. executors as aforesaid, that they be before our lord the king at Westminster on, &c. to shew in form aforesaid if, &c. why the damages aforesaid in the said action so assised as aforesaid ought not to be recovered by the said James, as administrator as aforesaid, against the said sir James, &c. as such executors as aforesaid, according to the form of the statute in such case made and provided if they should think fit, and further to do and receive what the court of our said lord the king before the king himself should then and there consider concerning them in this behalf, and that they should have there then the names of those by whom they should give them notice, and this writ, &c. the same day is given to the said Joseph there, &c. at which day, before our lord the king at Westminster, comes the said Joseph in his own proper person, and the sheriffs, to wit, A. B. and C. D. esquires, as before returned that the said sir James, &c. executors as aforesaid, had not, nor had any or either of them any thing in their bailiwick whereby

whereby they could give notice to them, or any or either of them, as by the said last-mentioned writ they were commanded, nor were they, or any or either of them, found in the same; and the said sir James, &c. executors as aforesaid, at that day being solemnly demanded, came by A. B. their attorney, and the said Joseph, administrator as aforesaid, prayeth that the damages aforesaid may be adjudged to him the said Joseph, administrator as aforesaid, according to the form of the statute in such case made and provided.

Plea, payment of the damages in discharge of the action, before the issue, of the writ scire facias.

And the said sir James, &c. executors as aforesaid, pray licence to imparl to the said declaration; and they have the same until, &c. at which day, before our lord the king at Westminster, comes as well the said Joseph, administrator as aforesaid, as the said sir James, &c. executors as aforesaid, in their proper persons, and say, that the damages aforesaid in the said action so assised as aforesaid ought not to be recovered by the said Joseph, administrator as aforesaid, against them; because they say, that they since the taking the said inquisition so had and taken as aforesaid, and after the return of the said writ and inquisition thereunto annexed, and before the suing out the said first writ of our said lord the king of *scire facias*, to wit, on, &c. at, &c. paid to the said Joseph, as administrator as aforesaid, the damages aforesaid so as aforesaid assised in full satisfaction and discharge of the said action, and which said damages so assised as aforesaid the said Joseph thereupon then and there accordingly accepted and received from the said sir James, &c. executors as aforesaid, in full satisfaction and discharge of the said action; and this, &c.; wherefore they pray judgment if the said damages in form aforesaid assised ought to be adjudged to the said Joseph by virtue of the said inquisition and return and of the said other premises in and by the said writs of *scire facias* suggested.

Replication, issue.

And the said Joseph, administrator as aforesaid, says, that by reason of any thing by the said sir James, &c. executors as aforesaid above in pleading alleged, he ought not to be barred from recovering the damages aforesaid in the said action so assised as aforesaid; because he says, that the said sir James, &c. executors as aforesaid, did not pay to the said Joseph the damages aforesaid so as aforesaid assised in manner and form as the said sir James, &c. have above alleged; and this he prays may be enquired of by the country.

Postea, verdict for plaintiff, and judgment.

Afterwards the process thereof is continued between the parties aforesaid in the plea aforesaid by the jury aforesaid being respited between them until, &c. unless the king's trusty and well-beloved Francis Bailer, esquire, one of his majesty's justices assigned to hold pleas in the court of our lord the king before the king himself shall first come, on, &c. at the Guildhall of the city of London, according to the form of the statute in such case made and

and provided for default of the jurors, because none of them did appear, at which day, before our lord the king at Westminster, the said Joseph, administrator as aforesaid, comes, and the justice aforesaid, before whom, &c. hath sent hither his record had in these words, afterwards, that is to say, on the day and year and at the place within contained, before the said Francis Buller, esquire, the justice within named, John Way, gentleman, being associated unto him, according to the form of the statute in that case made and provided, comes as well the within named Joseph, administrator as aforesaid, as the said sir James, &c. executors as aforesaid, by their respective attornies within made, and the jurors of the jury whereof mention is within named having been summoned come, who being chosen, tried, and sworn to declare the truth upon the issue within contained, upon their oath say, that the said sir James, &c. did not pay, &c. in manner and form as they have in pleading alledged; therefore it is considered by the court here that the said Joseph, administrator as aforesaid, do recover against the said sir James, &c. executors as aforesaid, the damages aforesaid in form aforesaid assessed according to the form of the statute in such case made and provided, to be levied of the goods and chattels which were of the said sir James, deceased, in the hands of the said sir James, &c. executors as aforesaid, to be administered; it is also considered by the said court here that the said Joseph do recover against the said sir James, &c. executors as aforesaid, thirty-four pounds for his costs and charges by him the said Joseph laid out in this behalf by the said sir James, &c. having pleaded to the said *scire facias* awarded to the said Joseph, and by his assent by the court here to be levied of the goods and chattels of the said sir James, A. W. A. H. and A. R.

G. Wood.

DOE, ON THE DEMISE OF
SIR WILLIAM GIBBONS, BARONET,
against

CREW AND OTHERS.

GEORGE the } *Scire facias to*
Third, &c. to the } *revive judgment*
Sheriff of Middlesex, } *in ejectment against*
greeting: Whereas } *gaint surviving*
defendant and } *terre-tenant.*

John Doe lately, that is to say, in Easter Term, in the twenty-first year of our reign, in our court before us at Westminster, in the said county of Middlesex, by our writ, and by the consideration and judgment of the said court, recovered against T. C. J. B. and B. S. all late of S. in your county, yeomen, his term then and yet to come of and in seven messuages, seven barns, seven stables, seven gardens, seven orchards, four hundred acres of meadow, and four hundred acres of pasture, with the appurtenances, in the parish of S. aforesaid, in the said county, which sir William Gibbons, baronet, on, &c. in the sixteenth year of our reign, had demised to the said John Doe, to have and to hold the said tenements, with the appurtenances, to him the said John Doe and his assigns from the thirty-first of July then last past for and during and unto the full end and term of ten years from thence
next

SCIRE FACIAS AGAINST TERRE-TENANT.

next ensuing and fully to be complete and ended, which is not yet expired or past; by virtue of which said demise the said John Doe entered into the said tenements, with the appurtenances, so demised to the said John Doe, with the appurtenances, and became and was thereof possessed until the said T. C. J. B. and B. S. afterwards, with force and arms, &c. ejected, expelled, put out, and removed the said John Doe from the tenements aforesaid, with the appurtenances, so demised to him in form aforesaid for the term aforesaid, which is not expired, and also fifty nine pounds for his damages which he sustainei as well by reason of the trespass and ejectment aforesaid as for his costs and charges by him about his suit in that behalf expended, whereof the said T. C. J. B. and B. S. are convicted, as by the record and proceedings thereof now remaining in our said court before us at W. aforesaid more manifestly appears: And whereas the said T. C. afterwards, and after the rendition of the said judgment, to wit, on, &c. in the twenty-fourth year of, &c. at, &c. died, and the said J. B. and B. S. survived him, and now, on behalf of the said John Doe, we have in our said court before us been given to understand and be informed, that although judgment aforesaid in form aforesaid is given, yet execution of that judgment still remains to be made, wherefore the said John Doe has besought us to grant him a proper remedy in this behalf, and because we are willing that those things which are just and right should have a due execution, therefore we command you, that by good and lawful men of your bailiwick you give notice to the said J. B. and B. S. and all and every other the tenant or tenants of the said premises, with the appurtenances, that they and each and every of them be before us on, &c. wheresoever we shall then be in England, for the said J. B. and B. S. and all and every other the tenant or tenants of the said premises, with the appurtenances, if they and each and every of them have or know or hath or knows of any thing, matter, or claim why the said John Doe should not have his execution of his said term yet unexpired of and in the said premises, with the appurtenances, according to the force, form, and effect of the recovery aforesaid, if they or any or either of them shall think fit or expedient so to do, and also for the said J. B. and B. S. to shew if they or either of them know or knows of any thing why the said John Doe should not have his execution for the damages, costs, and charges aforesaid, according to the force, form, and effect of the recovery aforesaid, if they or either shall think fit or expedient so to do, and further to do and receive whatever the same court before us shall then and there consider concerning them in this behalf; and have you there the names of those by whom you shall give them the said J. B. and B. S. and all and every of them the tenant or tenants aforesaid notice, and this writ. Witness, &c.

STORMONT AND WAY.

By virtue of this writ to me directed, men of my bailiwick, I have given notice
by A. B. and C. D. good and lawful to J. B. and B. S. within named, and
T. E

T. E. esquire, the same J. B. B. S. and T. E. being tenants of the premises within mentioned, that they and every of them be before our lord the now king within named at the day and place within contained, for the said J. B. B. S. and T. E. it they or any or either of them have or know or hath or knows of any thing, matter, or claim why the within named John Doe should not have his execution of the within mentioned tenements, with the appurtenances, according to the force, form, and effect of

the said recovery within mentioned, if they or either of them shall think fit and expedient so to do, and also for the said J. B. and B. S. to shew if they or either of them knows or know of any thing or matter why the said John Doe should not have his execution against them for the damages, costs, and charges within mentioned, according to the force, form, and effect of the recovery within mentioned, if they shall think fit and expedient so to do, as within I am commanded.

A. B. SHERIFF.

KING, ADMINISTRATOR, } GEORGE the Third, &c. to *Scire facias by*
against } the sheriff of Middlesex, greeting: administrator,
 HODGSKIN, CLERK. } Whereas Mary Hill, widow, heretofore, to wit, in the term of the Holy Trinity which was in the year of Our Lord 1771, in our court before us at Westminster, by bill, without our writ, and by the judgment of the same court, recovered against Joseph Hodgskin, clerk, six hundred pounds for a debt, as also sixty-three shillings for her damages which she sustained as well by reason of the detaining that debt as for her costs and charges by her about her suit in that behalf expended, whereof the said Joseph is convicted, as appears to us of record: And whereas the said Mary, after the recovery of the said judgment, to wit, on, &c. at, &c. died, having first duly made her last will and testament in writing, and thereby constituted and appointed Josiah King and Richard Townshend executors thereof, after whose death, and also after the death of the said Josiah King, also deceased, without having taken upon himself the execution of the said will and testament of the said Mary, and after the said Richard Townshend had in due manner renounced altogether the burthen of the execution thereof, to wit, on, &c. at Westminster, in your county, administration of all and singular the goods and chattels, right and credits of the said Mary at the time of her death, with the will annexed of the said Mary, were in due form of law committed to John King, the nephew and residuary legatee named in the last will and testament of the said Mary, by Frederic, by divine providence, archbishop of Canterbury, primate of all England, and Metropolitan, to whom the granting of administration in that behalf of right belonged, as we have been informed and given to understand: And whereas also on the behalf of the said John King in our said court before us we have been informed and given to understand, that although the said judgment hath been recovered as aforesaid, yet execution thereof still remains to be made, and he having besought us to grant him a fit remedy in this behalf, and we being willing that what is just and right should be done on this occasion, command you, that by good and lawful men of your bailiwick you give notice to the said Joseph that he be before us at Westminster on, &c. to shew if he hath or knoweth

SCIRE FACIAS BY ASSIGNEES OF BANKRUPT, &c.

eth any thing to say for himself why the said John King, as administrator of the goods and chattels which were of the said Mary at the time of her decease, with the will annexed of the said M. should not have execution against the said Joseph for the debt and damages aforesaid, according to the force, form, and effect of the said recovery if it shall seem expedient, and further to do and receive whatsoever our said court before us shall then and there consider concerning him in this behalf, and have you there then the names of those by whom you shall give him notice, and this writ. Witness, &c.

STORMONT AND WAY.

Drawn by MR. CROMPTON.

Scire facias in
C. B. by the as-
signees of a
bankrupt to re-
vive a judgment
in *assumpsit* which
had been once
revived by *scire*
facias by the
bankrupt before
his bankruptcy.

BUTT AND ANOTHER
against

} GEORGE
the Third, &c.
to the sheriff

THE RIGHT HONOURABLE E. C. B.—Whereas J. R. lately in our court before us at Westminster, by bill, without our writ, and by the judgment of the same court, recovered against the right honourable Edward Charles B. commonly called lord E. C. B. fifty pounds for his damages which he sustained as well by occasion of the not performing certain promises and undertakings lately made by the said Edward Charles to the said James as for his costs and charges by him about his suit in that behalf expended, whereof the said Edward Charles is convicted, as appears to us of record: And whereas afterwards, that is to say, in Easter Term, in the twenty-third year of our reign, it was considered in and by the said court before us, then and still being at Westminster aforesaid, in and by virtue of our writ of *scire facias* duly sued and prosecuted by the said James out of our said court before us at Westminster aforesaid, that the said James might have his execution against the said Edward Charles for the damages aforesaid according to the force, form, and effect of the said recovery by default of the said Edward Charles, as appears to us likewise of record: And whereas we have been given to understand and be informed in our said court before us, that after the giving the said several judgments the said James became a bankrupt within the true intent and meaning of the statutes made and now in force concerning bankrupts, and that all and singular the debts, goods, and effects which were of the said James at the time of his becoming a bankrupt were after he became a bankrupt in due manner assigned unto William Butt and Nathaniel Darwin, and that although the said judgments were to be given, yet execution of the said damages still remains to be made, wherefore the said W. B. and N. D. as assignees as aforesaid, to whom execution against the said Edward Charles for the damages aforesaid in form aforesaid recovered ought to be made, and now of right belongs, have humbly besought us to grant them a fit and proper remedy in this behalf, and we, being willing that what is right and just should be done on this occasion, command you, that by good and

and lawful men of your bailiwick you make known to the said Edward Charles that he be before us at Westminster on, &c. to shew if any thing he has or can say for himself why the said W. B. and N. D. as assignees as aforesaid, ought not to have execution against him for the damages aforesaid according to the force, form, and effect of the said recovery, if it shall seem expedient so to do, and further to do and receive what in our said court shall be then and there considered of him in this behalf, and have you there the names of those by whom you shall give him notice as aforesaid, and this writ. Witness William earl of Mansfield, at Westminster, the twenty-fourth day of January, in the twenty-fifth year of our reign.

Drawn by MR. CROMPTON.

Cox
against
PITT, EXECUTRIX. } GEORGE the Third, &c. to the Scire facias in
B. R. against an
executrix to re-
vive a judgment
in debt recover-
ed against the
testator.

as Robert Albion Cox, in our court be-
fore us at Westminster, by bill, without our writ, and by the
judgment of the same court, recovered against John Pitt one
thousand two hundred pounds debt, and sixty-three shillings costs
for his damages which he had sustained as well by the detention of
the debt as for his costs and charges by him about his suit in that
behalf expended, whereof the said John Pitt was convicted, as ap-
pears to us of record: And afterwards the said John Pitt made his
last will and testament in writing, and thereby appointed Bridget
Pitt, then the wife of the said John Pitt, executrix thereof, and
afterwards died, the said Robert Albion Cox being nowise satis-
fied his debt, damages, costs, and charges aforesaid, and now, on
behalf of the said R. A. C. we have been informed that although
the said judgment be given, yet execution of that judgment still
remains to be made to him, whereupon the said R. A. C. hath
humbly entreated us that a proper remedy may be provided to him
in this behalf, and we, being willing that what is just should be
done on this occasion, command you, that by good and lawful
men of your bailiwick you make known to the said Bridget that
she be before us at Westminster on, &c. to shew if any thing she
has or knows to say for herself why the said R. A. C. ought not to
have execution against her for the debt, damages, costs, and
charges to be levied of the goods and chattels which were of the
said John Pitt at the time of his death in her hands to be ad-
ministered, if it shall seem expedient so to do, and further to do
and receive what in our said court shall be then and there con-
sidered of him in this behalf, and have you there the names of
those by whom you shall give her notice, and this writ. Wit-
ness, &c.

F. BULLER.

Scire facias in C. B. by the executors of executrix to revive a judgment recovered by testator in his lifetime, and which had been once revived by the executrix against the original defendants.

ADAMS, CLERK, AND ANOTHER,
EXECUTORS, &c.
against

WHEATE, CLERK, AND ANOTHER.

GEORGE the Third, &c. to the sheriff of Gloucestershire, greeting:

Whereas E. L. esquire, heretofore, in our court of the bench, to wit, in the term of Saint Hilary, in the fourteenth year of our reign, before sir William De Grey, knight, and his companions, then our justices of the bench at Westminster, in the county of Middlesex, by the consideration of the same court, recovered against John Thomas Wheate, vicar of the vicarage and parish church of, &c. in your county, clerk, and the right honourable Spencer Hamilton, commonly called lord Spencer Hamilton, of, &c. in, &c. as well a certain debt of seven hundred and twenty pounds as also sixty-three shillings which in our said court were adjudged to the said E. L. for his damages which he had sustained by the occasion of the detaining of that debt, whereof the said J. T. W. and S. H. are convicted, as by the record and proceedings thereof remaining in our said court of the bench at Westminster aforesaid manifestly appears: And whereas the said Edward, after the recovery of the said judgment, and before the execution and satisfying the same, or any part thereof, died, after having first duly made his last will and testament in writing, and thereby constituted and appointed S. J. executrix thereof: And whereas in the same court of the bench, before the right honourable Alexander lord L. and his companions, then justices of our same court of the bench at Westminster aforesaid, it was afterwards considered by the said court that the said S. J. executrix as aforesaid, should have execution against the said J. T. W. and S. H. for the debt and damages aforesaid, whereof they are convicted, as by the inspection of the record as well in the rendition of the judgment aforesaid as in the adjudication of execution of the same judgment aforesaid in our court of the bench aforesaid now remaining appears to us of record: And whereas since the adjudication of the aforesaid execution, and before any execution obtained upon the aforesaid judgment, or the satisfying the said judgment, the said S. J. executrix as aforesaid, hath died, having first duly made her last will and testament in writing, and thereby constituted and appointed F. Adams, clerk, and J. T. executors thereof, as on the information of the said F. A. and J. T. we have also lately been given to understand, and although judgment of the debt and damages is given against the said J. T. W. and S. H. and also execution is adjudged as aforesaid, yet execution of the said judgment and adjudication of execution still remains to the said F. A. and J. T. as we have been given to understand, and because we are willing that those things which in our said court have been rightly acted should be demanded by a due execution, we command you, that, by good and lawful men of your bailiwick, you make known to the said J. T. W. and S. H. that they be before us at Westminster on, &c. to shew if any thing they have or know to say for themselves why the said

said F. A. and J. T. executors as aforesaid, ought not to have execution against them for the debt and damages aforesaid according to the force, form, and effect of the said recovery, if it shall seem expedient to them, and further to do and receive what our court of the bench at Westminster shall consider of them in this behalf, and have there the names of those by whom you shall make known to them, and this writ. *Witness, &c.*

Drawn by MR. J. GRAHAM.

Trinity Term, 22. Geo. III.

MIDDLESEX, to wit. Our lord the king sent to his sheriff of Middlesex his writ closed in these words, to wit, George the Third, &c. [Set out the first writ verbatim with the *te/le*] at which day, before our lord the king at Westminster, came the said plaintiffs, and offered themselves against the said defendants, who came not, and the aforesaid sheriff of Middlesex, to wit, A. B. and C. D. esquires, then and there returned on the said writ to our said lord the king that the said defendants, &c. [Recite the return of *non inventus*] and thereupon the said plaintiffs prayed another writ of our said lord the king to be directed to the said sheriff of Middlesex for the purpose aforesaid, and it was granted them; therefore our said lord the king, by his certain other writ, commanded the said sheriff of Middlesex, as formerly he had commanded him, that, &c. [Recite the mandatory part of the *alias scire facias*] at which day, before our said lord the king at Westminster, came the said plaintiffs and the said sheriff of Middlesex, to wit, the aforesaid A. B. and C. D. returned on the said last-mentioned writ to our said lord the king at Westminster that, &c. [Recite the return of *non est inventus* on the *alias scire facias*] thereupon the said plaintiffs then and there offered themselves against the said defendants, who on being solemnly demanded came by A. B. their attorney, and thereupon the said plaintiffs pray that execution for the damages, costs, and charges aforesaid in form aforesaid recovered may be adjudged to them the said plaintiffs against the said defendants according to the form and effect of the aforesaid recognition.

Declaration on an alias scire facias against bail in B. R.

V. LAWES.

Common Pleas, Hilary Term, 28. Geo. III.

MIDDLESEX, to wit. It was commanded to the sheriff of Middlesex, whereas M. C. lately, to wit, in Michaelmas Term, in the twenty sixth year of the reign of our lord the king, before Alexander lord Loughborough and his companions, then our said lord the king's justices of the bench at Westminster, by the consideration of the same court, recovered against the said W. D. late of, &c. fifty-eight pounds, which to the said plaintiff in the same court were adjudged for her damages which she had sustained by the occasion of not performing certain premises and undertakings made by the said W. D. to the said plaintiff at Westminster aforesaid and of her costs and charges by her about her suit in that

Declaration on a scire facias against executors.

SCIRE FACIAS AGAINST BAIL.

that behalf expended, whereof the said William is convicted, as by the record and proceedings thereof remaining in the said court manifestly appears; yet execution of the said judgment still remained to be made, and the said W. D. is since dead, having first duly made his last will and testament, and appointed W. M. and S. C. executors thereof, that by good and lawful men of his bailiwick he should make known to the said defendants that they should be before our said lord the king's justices at Westminster on, &c. to shew cause if any thing they had or know to say for themselves why the said plaintiff ought not to have her execution against them as such executors as aforesaid for the damages aforesaid, to be levied of the goods and chattels which were of the said W. D. at the time of his death in their hands to be administered, according to the form of the said recovery, if it should seem expedient for them so to do; at which day the said sheriffs, to wit, J. F. and M. B. esquires, returned on the said writ to the said justices at Westminster, that by T. H. and J. P. good and lawful men of his bailiwick, he had given notice to the said defendants in the said writ named, executors of the said W. D. deceased, to appear before his majesty's justices at the day and place in the said writ mentioned to shew cause, as by that writ they were required, and as he was in the said writ commanded; and thereupon said plaintiff offered herself on, &c. against them the said defendants, executors as aforesaid, who thereupon at that day, on being solemnly called, came by A. B. their attorney; and thereupon the said plaintiff prays that execution may be adjudged to her the said plaintiff against the said defendants, as such executors as aforesaid, for the damages aforesaid, to be levied of the goods and chattels which were of the said W. D. at the time of his death in their hands to be administered, according to the form of the said recovery.

V. LAWES.

Declaration on an *alias scire facias* in Palace Court whereone of the defendants appears and the other makes default against bail.

PALACE COURT, to wit. Our lord the king sent to the bearers of the virges of his household, officers and ministers of his court of his palace of Westminster, and every of them, his writ closed in these words, to wit, George the Third, &c. [Set out the first writ verbatim with the *teste*] at which said next court of our said lord the king of his palace of Westminster before the judges of the said court, that is to say, at the court of our said lord the king of his palace of Westminster, holden on, &c. in the said writ mentioned, at, &c. before the then judges of the said court, came the said J. W. and offered himself against the said J. T. and W. B. who came not, and one of the aforesaid bearers of the virges of the king's household, and an officer and minister of the court aforesaid, to wit, A. B. then and there returned on the said writ to the said then judges of the said court that the said defendants in the said writ named had not any thing within the jurisdiction of the court in the said writ written whereby or by which he could give them notice, as he was by the said writ commanded, nor were they the said defendants found within the same; and thereupon

upon the said plaintiff prayed another writ of our said lord the king to be directed to the said bearers of the virges of his said household, officers, and ministers of his said court of his palace of Westminster, and to every of them, for the purpose aforesaid, and it was granted him; thereupon our said lord the king, by his certain other writ, commanded the said bearers, and every of them, as formerly he had commanded them, that, by honest and lawful men within the jurisdiction of the court aforesaid, they or one of them should summon the said defendants that they be before the judges of the court aforesaid at the then next court of our said lord the king's palace of Westminster aforesaid on, &c. then next following and now last past, to be held at S. in the county of S. to shew if they knew or had any thing for themselves to say why the said plaintiff ought not to have execution against them for his damages, costs, and charges aforesaid, according to the form of the recognizance aforesaid, if he should think fit, and that they or one of them should have there then the names of those by whom they shall so summon them, and that writ; the same day was given by the said court of our said lord the king of his palace of Westminster to the said plaintiff, at the same court in the said last-mentioned writ specified, at which next court of our lord the king of his palace of Westminster, before the judges of the said court, that is to say, at the court of our said lord the king of his palace of Westminster holden on, &c. in the said last-mentioned writ specified, at, &c. in, &c. and within the jurisdiction of that and this court, before the then judges of the said court, came the said plaintiff and one of the bearers of the virges of the king's household, and an officer and minister of the court aforesaid, to wit, the said A. B. and returned on the said last-mentioned writ to the then said judges of the said court that the said defendants had not any thing within the jurisdiction of the court in the said last-mentioned writ named whereby or by which he could give them notice as he was therein commanded, nor were they the said defendants found within the same, whereupon the said plaintiff then and there offered herself against the said defendants, and the said J. T. on being solemnly demanded, came by A. B. his attorney, but the said W. B. although solemnly demanded, came not, but made default; and thereupon the said plaintiff prays that execution for the damages, costs, and charges in form aforesaid recovered may be adjudged to him the said plaintiff against the said defendants according to the form and effect of the aforesaid recognizance.

V. LAWES.

If this cause proceeds to issue or to judgment, care must be taken that they are with proper reference and continu-

ances, &c. as to the judgment by default against W. B.

V. LAWES.

And the said J. J. says, that the said plaintiff ought not to have execution for the damages, costs, and charges aforesaid in form aforesaid recovered adjudged to him against him the said J. J. ac-

Plea to the last declaration on an alias scire facias of death of

principal after judgment, and before the issuing of *scipias ad satisfaciendum*

SCIRE FACIAS AGAINST BAIL—REPLICATION.

According to the form and effect of the aforesaid recognizance; because he the said J. J. says, that the said J. C. in the said judgment mentioned, after the recovery of the said judgment, and before the issuing of any writ of *capias ad satisfaciendum* thereon against him the said J. C. died, to wit, at, &c. in, &c. and within the jurisdiction of this court; and this, &c.; wherefore he prays judgment if the said plaintiff ought to have execution for the damages, costs, and charges aforesaid in form aforesaid recovered adjudged to him against him the said J. J. according to the form and effect of the aforesaid recognizance.

V. LAWES.

Replication,
that *capias ad*
satisfaciendum is-
sued, and that
principal was
then living.

And the said plaintiff, as to the said plea of the said J. J. says, that he ought not to be barred from having execution for the damages, costs, and charges aforesaid in form aforesaid recovered and adjudged to him the said plaintiff against the said defendant according to the form and effect of the said recognizance; because he says, that after the recovery of the said judgment in the said writ of *scire facias* mentioned against J. C. and before the suing forth the said writs, or of either of them, to wit, on, &c. in the twenty-seventh year of the reign of our lord the now king, he the said plaintiff sued and prosecuted out of the court of our said lord the now king of his palace of Westminster held at Southwark aforesaid, in the said county of Surry, and within the jurisdiction of that and this court, before the then judges of the said court, a certain writ of our said lord the king of *capias ad satisfaciendum* of and upon the said judgment directed to the bearers of the virges of our said lord the king's household, officers, and ministers of the said court of his palace of Westminster, by which said writ our said lord the king commanded the said bearers that they, or some or one of them, should take the said J. C. if he should be found within the jurisdiction of the said court, and him safely keep, so that they, or some or one of them, might have his body before the judges of the said court at the then next court of our said lord the king's palace of Westminster on, &c. then next following, to be held at S. in the said county of S. to satisfy the said plaintiff seventeen pounds for his damages, costs, and charges aforesaid in form aforesaid recovered, and that they should have there then that writ, which said writ afterwards, and before the return thereof, to wit, on, &c. in the twenty-seventh year aforesaid, was delivered to A. B. then and there being one of the bearers of the said king's household, and an officer and minister of the court aforesaid, to be executed in due form of law; at which day, before the said judges of the said court in the said writ mentioned, and holden before the said judges of the said court next after the issuing of the said writ of *capias ad satisfaciendum*, that is to say, at the said court of our said lord the king of his palace of Westminster, holden at S. aforesaid, in the said county of S. on, &c. in the said writ mentioned, before the then judges of the said court, came the said plaintiff in his proper person, and the said bearer of the virges of the said king's household, to whom the said writ was so delivered

delivered for execution as aforesaid, then and there returned on the said writ to the said judges of the said last-mentioned court that the said J. C. in the said writ named was not found within the jurisdiction of the said court in the said writ written, as by the said writ of *capias ad satisfaciendum*, and the return thereof duly filed and remaining of record in the said court of our said lord the king of his palace of Westminster, more fully appears: And the said plaintiff further says, that the said J. C. at the said time of suing out the said writ of *capias ad satisfaciendum*, and of the return and filing of the same, was and still is living and in full life, to wit, at, &c.; and this, &c.; wherefore he prays judgment and execution for the damages, costs, and charges aforesaid in form aforesaid recovered, to be adjudged to him against the said J. J. according to the form and effect of the aforesaid recognizance.

V. LAWES.

Trinity Term, 27. Geo. III.

MIDDLESEX, to wit. Our lord the king sent to the sheriff of Middlesex his writ closed in these words, to wit, George the Third, &c. &c. [Copy the *scire facias* to revive judgment with the *teste verbatim*] at which day, before our lord the king at Westminster, came the said plaintiff in his proper person, and the sheriff, to wit, P. M. and C. H. esquire, sheriff of the said county, returned to our said lord the king on the said writ that by A. B. and C. D. good and lawful men of his bailiwick, he had given notice to the within named defendant to appear before the king at the day and place in the said writ mentioned, to shew cause as by the said writ he was required, as he the said sheriff was in the said writ commanded, the same day was given to the said plaintiff there, &c. at which day, before our said lord the king at Westminster, came the said defendant by A. B. his attorney, and thereupon the said plaintiff prays that execution may be adjudged to him of the debt and damages aforesaid according to the form and effect of the said recognizance.

Declaration on a *scire facias* to revive judgment in K. B.

V. LAWES.

And the said defendant, by A. B. his attorney, comes and defends the wrong and injury, when, &c. and says, that the said plaintiff ought not to have or maintain his aforesaid action thereof against him the said defendant; because he says, that there is not any such record of recovery against him the said defendant at the suit of the said plaintiff in manner and form as the said plaintiff hath above declared against him the said defendant; and this, &c.; wherefore, &c.

Plea to the above declaration, that there is no such record of recovery of judgment.

And the said plaintiff, as to the said plea of the said defendant by him above pleaded in bar, says, &c. (*precludi non*); because he the said plaintiff says that there is such record of recovery against him the said defendant at the suit of the said plaintiff in manner

Replication, to the last plea, that there is such record.

SCIRE FACIAS.—PLEA.—ELEGIT

manner and form as the said plaintiff hath above declared against him said defendant; and this he the said defendant is ready to verify by the said record, and thereupon prays that the said record, which is on a roll of Hilary term, in the seventeenth year of the reign of, &c. and numbered (430), may be seen and inspected by the said court of our said lord the king now here; and because it is necessary that the said record, if any such there be, be accordingly seen and inspected by the said court here before judgment is given in the premises, a day, that is to say, next, is given to the parties aforesaid, before our lord the king at Westminster, to hear such judgment.

V. LAWES.

Plea to a *scire facias*, an *elegit* sued out.

LORD MAYNARD }
at the suit of }
JAMES.

AND the said right honourable Charles lord viscount Maynard says, that the said Hugh ought not to have his execution against him

of the debt and damages aforesaid, by virtue of the said judgment in the said writ of *scire facias* mentioned; because he says, that after the rendition of the judgment aforesaid, and before the day of

This form is agreeable to Lev. 132, which says, that defence ought not to be made.

suing out the aforesaid writ of *scire facias* at and upon the aforesaid judgment against the said defendant so as aforesaid rendered, to wit, in Hilary term, in the eighteenth year of, &c. the said plaintiff came into the court of our said lord the now king before the king himself at Westminster, in the said county of Middlesex, and according to the form of the statute in such case made and provided, chose to be delivered to him all the goods and chattels which were of the said defendant (except the oxen and beasts of his plough), and also a moiety of all the lands and tenements of which the said defendant, at the time of rendering the said judgment, or at any time afterwards was seised, to have and to hold the said goods and chattels as his own proper goods and chattels, and also to hold the said moiety of the lands and tenements aforesaid, as his freehold, to him and his assigns by a reasonable price and extent, until the said plaintiff should have levied the debt and damages aforesaid in the said writ of *scire facias* specified, and in the said judgment mentioned according to the form of the statute; whereupon by a certain writ of our said lord the king of *elegit*, it was then and there commanded by the said court to the then sheriff of Middlesex, that he should cause to be delivered to the said plaintiff all the goods and chattels which were of the said defendant in his bailiwick (except the oxen and beasts of his plough), and also a moiety of all the lands and tenements in his bailiwick, of which the said defendant, at the time of the rendition of the said judgment, or at any time afterwards, was seised by a reasonable price and extent, to have and to hold the said goods and chattels as his own proper goods and chattels, and also to hold a moiety of the said lands and tenements as his freehold, to him and his assigns, until the said plaintiff should have levied his debt and damages aforesaid, and in what manner the said then sheriff should execute that writ, he the said then sheriff should make appear to our said lord the king at Westminster,

ster, on, &c. then next following, under his seal and the seals of those by whose oath he should make that extent and appraisement, and that the said then sheriff should have there then the names of those by whose oath he should make the said extent and appraisement, and that writ; which said writ the said plaintiff afterwards, and before the return thereof, to wit, on, &c. in the eighteenth year of, &c. at Westminster aforesaid, delivered to A. B. esquire and C. D. esquire, then sheriff of the said county of Middlesex to be executed in due form of law; by virtue of which said writ of *elegit* afterwards, by a certain inquisition taken at Westminster, in the said county of Middlesex, on, &c. in the year aforesaid, before the said A. B. and C. D. being such sheriff as aforesaid, by the oath of twelve good and lawful men of his bailiwick, it was found that the said defendant, on the day of taking the said inquisition, was possessed of divers goods and chattels mentioned in the said inquisition of the value of pounds; and that the said defendant, on the day of taking, &c. was seised of six messuages and divers, to wit, six hundred acres of land likewise mentioned in the said inquisition, and that the said then sheriff delivered the said goods and chattels in the said inquisition mentioned, and the moiety of the said lands and tenements in the said inquisition also mentioned, on the said day of taking the said inquisition to the said plaintiff by a reasonable price and extent, to have and to hold the said goods and chattels, and also to hold the moiety of the said lands and tenements, as his freehold, to him and his assigns, until he the said plaintiff should have fully levied the debt and damages aforesaid, according to the exigency of the said writ, as by the said writ of *elegit* and the inquisition thereon taken as aforesaid, remaining in the said court of our said lord the king, before the king himself at Westminster aforesaid, more fully appears; and this, &c.; wherefore, &c. if the said plaintiff ought to have his execution against him the said defendant of the debt and damages aforesaid, by virtue of the said judgment in the said writ of *scire facias* mentioned.

NASH GROSE.

(*Precludi non*); because he says, that he the said plaintiff hath not at any time since the rendition of the said judgment hitherto obtained a prosecution out of the said court of our said lord the king, before the king himself, any writ of our said lord the king of *elegit* directed to the sheriff of the county of Middlesex against the said defendant, in manner and form as the said defendant hath in pleading above alledged (a); and this he prays may be enquired of by the country, and the said defendant doth the like, &c.; therefore, &c.

Replication to last plea.

T. WALKER.

(a) Till the year 1778 it had been the general practice to reply *nil vel record* to a plea of the nature before set forth, but on demurrer to such a replication

judgment was given for the defendant, the fact of issuing any writ being a matter in pais.

And the said defendant, by A. B. his attorney, comes, &c. and Plea to a *scire facias* (*actio non*); because he says, that after the recovery of the *scire facias*,
af-re-

aforesaid judgment against the said A. B. and long before the exhibiting, to wit, on, &c. he the said A. B. offered to render, and was then and there about to render, and would then and there have rendered his body in execution of the said judgment, according to the form and effect of the condition of the said recognizance; and thereupon to prevent such render, it was then and there agreed by and between the said A. B. and the said plaintiff, that the said A. B. should not render his body in execution of that judgment, and that the said A. B. should pay, or cause to be paid to the said plaintiff, the sum of pounds, and that on payment thereof the bail given for the said A. B. in that suit should be from thence wholly discharged from the said recognizance, and the said sum of, &c. should be paid by the said A. B. to the said plaintiffs, and be received by them of him the said A. B. in full payment and satisfaction of the judgment aforesaid: And the said defendant further says, that by reason of the said agreement, and on no other reason, account, or pretence whatsoever, he the said A. B. did not render his body in execution of that judgment, and that in pursuance of the said agreement the said A. B. afterwards, and before the exhibiting the bill of the said plaintiffs, to wit, on, &c. paid to the said plaintiff, and the said plaintiff then and there accepted and received from the said A. B. the said sum of, &c. whereby the said bail given for the said A. B. in the said suit, according to the agreement, and in pursuance thereof, became from thence wholly discharged from the recognizance, to wit, at, &c.; and this, &c.; wherefore, &c. if, &c.

J. MORGAN.

Replication.

(*Proclandi non*); because protesting that the said A. B. did not offer to render his body in execution of the said judgment, as the said defendant hath above in pleading alledged; protesting also, that the said A. B. did not pay to the said plaintiff, or any of them, the said pounds, in manner and form as the said defendant hath above in pleading alledged; for replication in this behalf the said plaintiffs say, that it was not agreed by and between the said A. B. and the said plaintiff, in manner and form as the said defendant hath above in his said plea alledged; and this they pray, &c.; and the said defendant doth the like, &c.

SCIRE FACIAS ON PARTICULAR STATUTES.

Hilary Term, 25. Geo. III.

Joachim and another } AND now, to wit, on the twelfth day of February in this same term, the said T. J. and J. J. appeared here in court by A. B. their clerk in court, and pray oyer of the said writing of *scire facias*, and of the said return thereon, and they prove by the certificate of two persons living at the place.

arc

are read to them; they also pray over of the said bond in the said writ of *scire facias* mentioned, and of the condition thereunder written, and they are read to them in these words: Know all men, &c. &c.; which being by them heard and understood, they complain that they are greatly molested by colour of the premises, and that the less justly; because protesting that the said writ of *scire facias*, and the said return thereon, and the said bond therein mentioned, and the condition thereunder written, are not nor are, nor is either of them sufficient in law to compel them to answer thereto; for plea the said T. J. and J. J. say, that his said majesty ought not to have execution against them for the said sum of two hundred and twenty-three pounds in the said writ of *scire facias* mentioned, or for any part thereof; because they say, that by a certain act made in the parliament held at Westminster, in the county of Middlesex, in the thirty-third year of the reign of king Henry the Eighth, it was (amongst other things) enacted, that if any person or persons of whom any debt or duty in the said act specified, was or thereafter should be demanded or required, should alledge, plead, declare, or shew in any of the courts in the said act before-mentioned, good, perfect, and sufficient cause or matter in law, reason, or good conscience in bar or discharge of the said debt or duty, or why such person or persons ought not to be charged or chargeable to or with the same, and the same cause or matter so alledged, pleaded, declared, or shewn, should be sufficiently proved in such one of the said courts as he or they should be impleaded, sued, vexed, or troubled for the same, that then the said courts, and every of them, should have full power and authority to accept, adjudge, and allow the same proof, and wholly and clearly to acquit and discharge all and every person and persons that should be so impleaded, sued, vexed, or troubled for the same, any thing in that present act before-mentioned to the contrary notwithstanding, as by the said act (amongst other things) more fully appears; and the said T. J. and J. J. for good, perfect, and sufficient cause and matter in reason and good conscience in bar and discharge of the said sum of two hundred and twenty-three pounds in the said writ of *scire facias* mentioned, do alledge, plead, declare, and shew, that in pursuance of the said act of parliament in the said condition of the said bond mentioned, the said two thousand two hundred and twelve pounds of pepper in the said condition also mentioned, and every part thereof, were after the making of the said bond and the condition thereof, really and truly shipped and put on board the said ship in the said condition mentioned, and exported into parts beyond the seas, to wit, to Newport, in the said condition mentioned, and that no part thereof was at any time afterwards relanded or unshipped with intent to be relanded in any part of Great Britain, but the same, and every part thereof, were unshipped at the port of Newport aforesaid, as by a certificate testifying the same under the hands and seals of two known British merchants then being at N. aforesaid, where the said pepper was landed, more fully appears; which

SCIRE FACIAS AGAINST ADMINISTRATOR

said certificate is to the tenor and effect following: [Set forth the certificate verbatim] all and singular which matters and things the said T. J. and J. J. are ready to prove as the court here, &c.; and that the said bond for the said two hundred and twenty-three pounds is such a debt as in the said act so made in the reign of king Henry the Eighth as aforesaid is mentioned, and that this court of exchequer is one of the courts specified and alluded to in the said act, and that the said matter so by them alledged, pleaded, declared, and shewn as aforesaid, is good and sufficient cause and matter in reason or good conscience why his said majesty ought not to have execution against them for the said sum of two hundred and twenty-three pounds in the said writ of *scire facias* mentioned, or any part thereof, or why they ought to be discharged of the said debt, with this also, that they the said T. J. and J. J. will certify that the said two thousand two hundred and twelve pounds of pepper in the said condition of the said bond mentioned, and the said two thousand two hundred and twelve pounds of pepper mentioned in the aforesaid certificate are the same identical goods, and not other or different, wherefore the said T. J. and J. J. pray judgment, and that the said bond may be cancelled and discharged, and that the same may be delivered to them for their discharge in that behalf, and that as to the premises they may be dismissed the court here, &c.

V. LAWES.

Scire facias to revive judgment against administrator of defendant, who died after judgment signed and enquiry awarded, and before writ of enquiry executed.

GEORGE the Second, by the Grace of God, &c. to the Sheriff of Yorkshire, greeting: Whereas Eleanor Garton, lately in our court before our justices of the bench at Westminster, to wit, in Hilary term last past, impleaded David Shew, late of, &c. in your county, grocer, in our said court of the bench at Westminster, in a certain plea of trespass on the case; for that whereas, &c. (recite the declaration) and thereupon she brought suit, &c. and such proceedings were thereupon had in our said court of the bench at Westminster aforesaid in the said plea, that the said Eleanor ought to recover her damages by her sustained by reason of the non-performance of the several promises and undertakings aforesaid; but because it was not known to our said court of the bench aforesaid what damages the same Eleanor had sustained by reason of the premises aforesaid, therefore we command you, that by the oath of twelve good and lawful men of your bailiwick you should diligently enquire what damages the said Eleanor had sustained as well by reason of the not performing of the several promises and undertakings aforesaid, as for her costs and charges by her about her suit in this behalf expended, and the inquisition which you should make should certify to our justices at Westminster in fifteen days from the day of Easter now last past, under your seal and the seals of those by whose oath you should have taken that inquisition, together with that writ, and the same day was given to the said E. there, as by the record and proceedings thereof in our said court

court of the bench aforesaid at Westminster aforesaid remaining, manifestly appears: And whereas before the said fifteen days from the day of Easter aforesaid, and after the issuing of the said writ against the said David at the Castle of York; in the county aforesaid, died intestate, and the enquiry of the damages aforesaid yet remained to be made, and one Mary Shew, widow, as administratrix of all and singular the goods and chattels which belonged to the said D. at the time of his death, as we, by the suggestion of the said E. in our said court of the bench understood; and because we are willing that these things which are lawfully transacted in our court of the bench should be carried into due execution, we command you, that by good and lawful men of your bailiwick you give notice to the said Mary Shew that she be before our justices at Westminster on the morrow of the Holy Trinity, to shew if she hath or can say any thing for herself why the damages aforesaid in the action aforesaid ought not to be assessed, and by the said E. recovered, according to the form of the statute in such case made and provided, if she shall think fit, and have there the names of those by whom you shall give her notice and this writ. Witness, &c.

George the Second, &c. to the sheriff of Yorkshire, greeting: *Writ of enquiry*
Whereas Eleanor Garton, lately in our court before our justices of *on the last term*
the bench at Westminster, to wit, in Hilary term last past, im-*faciat.*
pleaded David Shew, late of, &c. grocer, in our said court of the bench at Westminster, in a certain plea of trespass on the case; for that whereas, &c. [recite the whole declaration]; and such proceedings were thereupon had in our same court of the bench aforesaid at Westminster aforesaid, in the said plea, that the said Eleanor ought to recover her damages by her sustained by reason of the not performing of the several promises and undertakings aforesaid, but because it was not known to our said court what damages the same Eleanor had sustained by reason of the promises aforesaid, therefore we commanded you, by the oath of twelve good and lawful men of your bailiwick, that you should diligently enquire what damages the said E. had sustained, as well by reason of the not performing of the several promises and undertakings aforesaid, as for her costs and charges by her about her suit in that behalf expended, and the inquisition which you should make thereupon you should certify to our justices at Westminster in fifteen days from the day of Easter now last past, under your seal and the seals of those by whose oaths you should have taken that inquisition, together with that writ, and the same day was given to the said E. there, as by the record and proceedings thereof in our said court of the bench aforesaid, at Westminster aforesaid remaining, manifestly appears: And whereas on the part of the said E. it has since been shewn to us in our court of the bench aforesaid, at Westminster aforesaid, that after the award of the said writ of enquiry and damages, and before the said fifteen days from, &c. the said David, at, &c. died intestate, and the inquisition of the damages aforesaid then remained to be made, and that one Mary Shew, widow was

was administratrix of all and singular the goods and chattels, rights and credits which belonged to the said D. at the time of his death, and it has been since considered by our said justices of the bench at Westminster; by virtue of our writ of *scire facias* sued out of our said court of the bench aforesaid by the said E. of and upon the promises, according to and by force of the statute in, &c. that the damages aforesaid, in the county aforesaid, should be assessed, and by the said E. recovered according to the form of, &c. by the default of the said M. T. as also appears to us of record; therefore we command you, that by the oath of twelve honest and lawful men of your bailiwick, you diligently enquire what damages the said E. hath sustained as well by reason of the not performing the several promises and undertakings aforesaid, as for her costs and charges by her, &c. and the inquisition which you should make thereon do you certify to our justices at, &c. on, &c. under your seal and the seals of, &c. together with this writ. Witness; &c.

Declaration on a
scire facias a-
gainst the bail on
their recogni-
zance.

GEORGE the Third, by the Grace of God, of Great Britain, France, and Ireland, king, defender of the faith, &c. to the Sheriff of Middlesex, greeting: Whereas B. F. heretofore, to wit, in Hilary term, in the seventeenth year of our reign, implicated P. M. in our court before us, (the said court then being held at Westminster, in the county of Middlesex) by bill in a plea of trespass on the case on promises to the said B. F. his damage of ninety pounds of and for the not performing certain promises and undertakings then lately made by the said P. M. to the said B. F.; and also heretofore, to wit, on, &c. in Michaelmas term, in the eighteenth year of our reign, L. M. C. of, &c. in the parish of, &c. in the county of Middlesex, victualler, and J. D. of, &c. in, &c. starchmaker, came into our said court before us at Westminster aforesaid, and became pledges and manucaptors in their own proper persons, and each of them by himself became pledge and manucaptor for the said P. M. that if it should happen that the said P. M. should be convicted in the plea aforesaid, then they the said manucaptor granted, and each of them for himself did grant that all such damages as should be adjudged to the said B. F. in that behalf, should be made of their and each of their lands and chattels, to be levied to the use of the said B. F. if it should happen that the said P. M. should not pay the said damages to the said B. F. or render himself to the marshal of our prison of the Marshalsea before us: And whereas such proceedings were had in the plea aforesaid in our said court before us at Westminster aforesaid, that afterwards, to wit, in Hilary term, in the eighteenth year aforesaid, the said B. F. by the consideration and judgment of our said court before us at Westminster aforesaid, recovered against the said P. M. fifty-five pounds for his damages which he had sustained as well on occasion of the not performing the aforesaid promises and undertakings for his costs and charges by him laid out about his suit in that behalf, whereof the said P. M. is convicted, as appears to us of re-

cord :

cord: And whereas execution of the judgment aforesaid remaining to be made, and the said P. M. not having paid the said B. F. the said damages, nor rendered himself on that occasion to the said prison of our Marshalsea before us as we were given to understand from the information of the said B. F. in our said court before us, as it was afterwards, to wit, in Trinity term, in the eighteenth year aforesaid, upon and by virtue of our writ of *scire facias* sued by the said B. F. out of our said court before us at Westminster aforesaid of and concerning the premises aforesaid considered by our said court before us, that the said B. F. should have his execution for the damages, costs, and charges aforesaid, according to the force, form, and effect of the said recognizance by the default of the said L. M. C. and J. D. whereof the said L. M. C. and J. D. were convicted, as appears to us of record, and now on the part and behalf of the said B. F. we have been given to understand in our said court before us at Westminster aforesaid, that although judgment hath been thereupon given in our said court for the said B. F. in form aforesaid, yet execution for the damages, costs, and charges aforesaid still remain to be made to the said B. F. wherefore he hath humbly besought us to provide him a proper remedy in that behalf, and we being willing that those things which are rightly done and transacted in our said court before us be carried into due execution, do command you, that by honest and lawful men of your bailiwick you cause it to be made known to the said L. M. C. and J. D. that they be before us on, &c. next after, &c. to shew if they have or know, or if either of them hath or knoweth any thing to say for themselves or himself why the said B. F. ought not to have his execution for the damages, costs, and charges aforesaid against them and each of them, according to the force, form, and effect of the said recovery against them in that behalf, if it shall seem expedient for them so to do, and further to do and receive what our said court before us shall then and there consider of them in this behalf, and that you have there the names of those by whom you shall so make it known to them, and this writ. Witness William earl of Mansfield at Westminster, the twentieth day of April, in the twentieth year of our reign.

V. LAWES.

MIDDLESEX, to wit. It was commanded to the sheriff of Middlesex, whereas Margaret Corner lately, to wit, in Michaelmas term, in the twenty-sixth year of the reign of our lord the now king, before Alexander lord Loughborough and his companions, then our lord the king's justices of the bench at Westminster, by the consideration of the same court recovered against William Dick, late of, &c. fifty-eight pounds, which to the said plaintiff in the same court were adjudged for her damages which she had sustained by occasion of the not performing certain promises and undertakings made by the said W. D. to the said plaintiff at Westminster aforesaid, and of her costs and charges by her about

Declaration on a
scire facias a-
gainst executors
in C. P.

about her suit in that behalf expended (whereof the said William is convicted), as by the record and proceedings thereof remaining in the said court manifestly appears; yet execution of the said judgment still remains to be made, and the said W. D. is since dead, having first duly made his last will and testament, and appointed A. B. and C. D. executors thereof) that by good and lawful men of his bailiwick he should make known to the said defendants that they should be before our said lord the king's justices at Westminster on, &c. now last past, to shew cause if any thing they had or knew to say for themselves why the said plaintiff ought not to have her execution against them as such executors as aforesaid, for the damages aforesaid to be levied of the goods and chattels which were of the said W. D. at the time of his death in their hands to be administered, according to the form of the said recovery if it should seem expedient for them so to do, at which day the said Sheriff, to wit, J. F. and M. B. esquire, returned on the said writ to the said justices at Westminster, that by T. H. and C. O. good and lawful men of his bailiwick, he had given notice to the said defendants in the said writ named executors of the said W. D. deceased, to appear before his majesty's justices at the day and place in the said writ mentioned, to shew cause as by that writ they were required, and as he was in the said writ commanded; and thereupon the said plaintiff offered herself on the fourth day against them the said defendants, executors as aforesaid, who thereupon at that day, on being solemnly called, came by W. H. their attorney, and thereupon the said plaintiff prays that execution may be adjudged to her the said plaintiff against the said defendants, as such executors as aforesaid, for the damages aforesaid to be levied of the goods and chattels which were of the said W. D. at the time of his death in their hands to be administered, according to the form of the said recognizance.

V. LAWES.

Declaration upon a *scire facias* to revive judgment in K. B.

MIDDLESEX, to wit. Our lord the king to his sheriff of Middlesex his writ closed in these words, to wit: George the Third, &c. &c. [Copy the *scire facias* to revive judgment, with the *tesis* verbatim]; at which day, before our lord the king at Westminster, came the said plaintiff in his proper person and the sheriffs, to wit, A. B. esquire and C. D. esquire, sheriffs of the said county, returned to our said lord the king on the said writ, that by J. A. and J. S. good and lawful men of his bailiwick, he had given notice to the within-named defendant to appear before the king at the day and place in the said writ mentioned, to shew cause as by the said writ he was required, as he the said sheriff was in the said writ commanded, the same day was given to the said plaintiff there, &c.; at which day, before our said lord the king at Westminster, came the said defendant by A. B. his attorney, and thereupon the said plaintiff prays that execution may be adjudged to him of the debt

and

and damages aforesaid, according to the form and effect of the said recognizance.

V. LAWES:

Plea, that there is no such record of recovery and judgment.

Replication, that there is such record.—(See ante 564, *note*.)

MIDDLESEX, to wit. Our lord the king hath sent to his Declaration on a
sheriff of Middlesex his writ closed in these words, to wit: George *scire facias* a-
the Third, by the grace of God, of Great Britain, France, and
Ireland, king, defender of the faith, &c. to the sheriff of Mid-
dlesex, greeting: Whereas Thomas Wells, lately in our court be-
fore us at Westminster by bill without our writ, and by the judg-
ment of the said court, recovered against J. H. M. thirty-nine
pounds for his damages which he sustained as well by reason of the
not performing certain promises and undertakings made by the said
J. H. M. to the said T. W. as for his costs and charges by him
about his suit in that behalf expended, whereof the said J. H. M. is
convicted, as appears to us of record, and although judgment
thereof be thereupon given, yet execution of the damages afore-
said still remains to be made to him the said T. W. : And whereas
G. S. of, &c. stock-broker, and J. P. of, &c. perfumer lately in
Easter term, in the twenty-eighth year of our reign in our said
court before us at Westminster, came personally in their own pro-
per persons, and became pledges and bail, and each of them be-
came pledges and bail for the said J. H. M. that if it should hap-
pen the said J. H. M. should be convicted at the suit of the said
T. W. in the plea aforesaid, then the said G. S. and J. P. con-
sented, and each of them consented that all such damages as should
be adjudged to the said T. W. should be made of their and each
of their lands and chattels to the use of the said T. W. if it should
happen that the said J. H. M. should not pay the said damages, or
render himself to the marshal of our prison of the Marshalsea be-
fore us on that occasion, as by the record of the said recognizance
now remaining in our said court before us at Westminster fully
appears; yet the said J. H. M. hath not yet paid the said damages,
or any part thereof, to the said Thomas, or rendered himself to the
marshal of our prison of the Marshalsea before us on that occasion
as we have received information from the said T. W. wherefore
the said T. W. hath humbly besought us to provide him a proper
remedy in this particular, and we being willing that what is right
and just should be done, do command you, that by honest and law-
ful men of your bailiwick you make known to the said G. S. and
J. P. that they be before us at Westminster, on, &c. to shew if they
have or know of any thing to say for themselves or himself why
the said T. W. should not have execution against the said G. S.
and J. P. for the damages aforesaid, according to the form and ef-
fect of the said recognizance, if it should seem expedient for him so
to

to do, and further to do and receive all and singular those things which our said court before us shall then and there consider of them in this behalf; and have there then the names of those by whom you shall so cause it to be made known to them, and this writ. Witness Lloyd lord Kenyon at Westminster the fifteenth day of May, in the twenty-ninth year of our reign.

STORMONT AND WAY.

Continuance.

At which day, before our lord the king at Westminster, come as well the said T. W. by A. B. his attorney, as the said J. H. M. by C. D. his attorney, and the said sheriff, to wit, W. C. esquire and sir B. H. knight, now return that he, by virtue of the said writ to him directed by E. F. and G. H. honest and lawful men of his bailiwick, hath given notice to the said G. S. and J. P. that they should be before our lord the king at Westminster on this day, to wit, on, &c. to shew in form aforesaid, the same day is given to the parties aforesaid, &c. ; at which day, before our lord the king at Westminster, came as well the said T. W. by his said attorney as the said G. S. and J. P. by their said attorney, and the said T. W. prays that execution may be adjudged to him of the damages aforesaid, according to the force, form, and effect of the said recognizance; and now at this day, to wit, on, &c. until which day the said G. S. and J. P. had leave to imparl to the said writ, and then to answer the same; at which day, before our lord the king at Westminster, comes as well the said T. W. by his said attorney, as the said G. S. and J. P. by O. P. their attorney, and the said G. S. and J. P. say, that the said J. W. ought not to have execution of the damages aforesaid to be adjudged to him, according to the force, form, and effect of the said recognizance; because they say, that after the giving the same judgment against the said J. H. M. and before the suing out the said writ of *scire facias* in the said declaration mentioned, and before the return of any writ of *capias ad satisfaciendum* against the said J. H. M. at the suit of the said T. W. upon the said judgment, to wit, on, &c. the said J. H. M. died, to wit, at, &c. ; and this, &c. ; wherefore, &c. if the said Thomas ought to have execution adjudged to him of the damages aforesaid, according to the force, form, and effect of the said recognizance, &c.

S. SHEPHERD.

Plea, that the defendant in the original action died before any *capias satisfaciendum* returned against him.

Vide Filewood v. Popplewell Turner, 2 Will. 3. Morg. Ent. 541.

Replication, that a *capias satisfaciendum* was sued out, and that principal was living at the return of same.

And the said T. W. says, that he by reason of any thing by the said G. S. and J. P. in their said plea by them above pleaded in bar alledged, ought not to be barred from having execution against them of the said damages by virtue of the said recognizance, because he says, that after the giving of the said judgment against the said J. H. M. at the suit of him the said T. W. and before the suing forth the said writ of *scire facias*, to wit, on, &c. in the twenty-ninth year of the reign of our lord the now king, to wit, at, &c. he the said Thomas Wells sued and prosecuted out of the court

court of our lord the now king, before the king himself, the said court then and still being held at Westminster in the county afore said of and upon the said judgment, his majesty's writ of *capias ad satisfaciendum* directed to the then sheriffs of London, by which said writ our said lord the king commanded the said then sheriffs of London, that the said sheriffs should take the said J. H. M. if he should be found in their bailiwick, and safely keep him so that they might have his body before our said lord the now king at Westminster on Friday next, after one month of Easter, to satisfy the said T. W. his damages afore said, in form afore said recovered, at which said day, at the return of the said writ of *capias ad satisfaciendum*, W. C. esq. and sir B. H. the then sheriffs of London afore said, returned here upon the said writ, that the said J. H. M. was not found in their bailiwick, as by the said writ, and the return thereof, in the said court of our lord the king, before the king himself, at Westminster afore said remaining on record assiled, more fully appears: And the said T. W. further says, that the said J. H. M. at the said return of the said writ of *capias ad satisfaciendum*, and long afterwards, was living and in full life, to wit, at, &c.; and this, &c.; wherefore he prays judgment, and that execution of his damages afore said against the said G. S. and J. P. according to the force, form, and effect of the said recognizance, may be adjudged to him, &c.

V. LAWES.

And the said G. S. and J. P. say that the said Thomas Wells, by reason of any thing in his said replication above alledged, ought not to have execution adjudged to him according to the force, form, and effect of the said recognizance, because they say, that the said J. H. M. at the time of the said return of *capias ad satisfaciendum* in the said replication mentioned, was dead, and not living in full life, as by the said replication is above alledged, and of this they put themselves upon the country, &c. And the said Thomas Wells doth the like; therefore to try the issue afore said between the parties afore said above joined, let a jury thereupon come before our lord the king at Westminster, on ^{next} after twelve, &c. by whom, &c. and who neither, &c. to recognize, &c. because as well, &c. the same day is given to the parties afore said there.

GEORGE the Third, &c. to the sheriff of Essex, greeting: Whereas Edward Boosey, executor of the last will and testament of Joseph Brewer deceased, who in his life time, and at the time of his decease, was executor of the last will and testament of Edward Brewer deceased, in Hilary Term, in the twenty-sixth year of our reign, before Alexander lord Loughborough and his companions, then our justices of the bench at Westminster, had impleaded James Raven, late of, &c. in the county of K. executor of the last will and testament of Eliz: Fisher deceased, in a plea that

SCIRE FACIAS BY AND AGAINST EXECUTOR.

that he should render to the said E. B. as such executor as aforesaid one hundred and twenty pounds of lawful money of Great Britain, which he unjustly detained from him, &c. declaring in the same plea against him the said J. R. by E. W. his attorney, that whereas, &c. [Recite the declaration except the profert of the letters testamentary; then go on with a recital of the plea, which in this case was *plene administravit* and the replication to such plea, omitting the *similiter* (the recital of the plea, &c. is as follows, viz.) and said defendant, by R. P. his attorney, came and defended, &c. to the end, and the replication concludes to the country, &c. then you go on as follows, viz.] And such proceedings were thereupon had, that in Hilary Term aforesaid, in the twenty-fifth year aforesaid, that issue was duly joined between the said E. B. and the said J. R. to be tried by a jury of the county, and that jury were respited before our judges at Westminster until fifteen days of Easter now last past, unless our justices, assigned to take the assizes in the county aforesaid, should come before on, &c. at, &c. in, &c. at which day and place, before the honourable sir Henry Gould, knight, one of our justices of the court of C. B. at Westminster, and sir William Ashburst, knight, one of our justices assigned to hold pleas before us, our justices appointed to hold the assizes for the above written county of Essex, according to the form of the statute in, &c. came as well the above-named E. B. as the above-named J. R. by their attorneys above mentioned; and the jurors of the jury whereof mention is above made, being impannelled and drawn by ballot according to the form of the statute, &c. and called over who came to speak the truth of the matters above mentioned being tried and sworn upon their oath, said that the said J. R. at the time of suing out the original writ of the said E. B. against him the said J. R. to wit, at, &c. had divers goods and chattels which were of the above-named E. B. at the time of her death in the said J. R.'s hands and possession to be administered, whereby he could and might have paid and satisfied unto him the said E. B. the debt in the above declaration mentioned; and the said jurors assessed the damages of the said E. B. by reason of the premises, besides his costs and charges by him about his suit in that behalf laid out and expended, to one shilling, and for his costs and charges to forty shillings: And afterwards and before the said fifteen days of Easter, to wit, on, &c. at, &c. the said E. B. died, having first made his last will and testament in writing, and thereof constituted and appointed Margaret Boosey, his wife, and his son, Edward Boosey, joint executor and executrix, who proved the same, and took upon themselves the burthen of the execution thereof; and afterwards and within two terms after the aforesaid verdict, to wit, in Trinity Term now last past in our same court before our said justices of the bench, to wit, at, &c. it was by force of the statute in such case made and provided, considered by our same court, that the said E. B. should recover against the said J. R. his debt aforesaid,

BY EXECUTOR AGAINST ADMINISTRATRIX.

said, and his damages, costs, and charges to two pounds and one shilling, by the jurors aforesaid, assessed in form aforesaid, and also thirty-two pounds nineteen shillings for his costs and charges by our said court adjudged of increase to the said E. B. by his assent to be levied of the goods and chattels which were of the said E. F. deceased, at the time of her death, if he had so much thereof in his hands to be administered, and if he had not so much thereof in his hands to be administered, then the said damages, costs, and charges amounting in the whole to thirty-five pounds to be levied of the proper goods and chattels of said J. R. whereof said J. R. is convicted, as appears to us of record; and whereas now on the behalf of the said M. B. and E. B. executors as aforesaid in our court, we have been informed, that although judgment be thereupon given, yet execution for the said debt and damages still remains to be made, whereupon the said M. B. and E. B. bring into our court the letters testamentary of the said E. B. deceased, under the seal of the dean and chapter of the collegiate church of Saint Peter, Westminster, in the county of Middlesex, whereby it appears that the said M. B. and E. B. are executor and executrix of the said E. B. deceased, and have administration thereof, and beseech us that a proper remedy may be provided for them in this behalf; and we, being willing that what is just should be done therein, do command you, that by good and lawful men of your bailiwick you make known to the said J. R. that he be before our justices at Westminster on the morrow of Saint Martin to shew if any thing he has or knows to say for himself why the said M. B. and E. B. executors as aforesaid, ought not to have their execution against him for the said debt and damages, according to the force, form, and effect of the said recovery if it shall seem expedient, and further to do and receive what our said court shall then and their consider of in this behalf, and have the names of those by whom you shall make it known to him, and this writ. Witness Alexander lord Loughborough, at Westminster, the fifth day of July, in the twenty-sixth year of our reign, &c.

MIDDLESEX to wit. Our lord the king sent to the sheriff *Scire facias by* of Middlesex closed in these words, to wit, George, &c. to the *executors on a* sheriff of Middlesex, greeting: Whereas Charles lord Viscount *judgment reco-* Maynard, &c. executors of the last will and testament of sir W. M. *vered against an* deceased, lately in our court before us at Westminster by bill *administratrix.* without our writ, and by the judgment of the said court, recovered against M. H. widow, administratrix, &c. of R. H. deceased, a debt of four hundred pounds, and also eighteen pounds ten shillings costs for their damages, which they had sustained as well by reason of the detaining of that debt, as for their costs and charges by them expended about their suit in that behalf adjudged to them, whereof the said M. H. is convicted as appears to us of record; and whereas the said Charles lord viscount M. and sir T. A. since

SCIRE FACIAS.—PLEA.—PAYMENT.—

the recovery of the said judgment are dead, and the said M. H. since the recovery of the said judgment is also dead, having first duly made her will, and of her will appointed J. H. and J. F. executors as by the information of the said T. R. &c. we have been given to understand: And now on the behalf of the said T. R. &c. in our said court before us, we are informed that although judgment thereof has been duly recovered as aforesaid, yet execution of that judgment still remains to be made to them, whereupon the said T. R. &c. have humbly besought us to provide them a fit remedy in this respect, and we, being willing that what is just and right should be done on this occasion, do command you, that by good and lawful men of your bailiwick you cause it to be made known to the said J. H. and J. F. that they may be before us at Westminster, on, &c. to shew if they have or know of any thing to say for themselves, why the said J. R. &c. ought not to have their execution against them for the debt and damages aforesaid, to be levied of the goods and chattels which were of the said M. H. at the time of her death in their hands to be administered if they have so much in their hands, according to the force, form, and effect of the said recovery if it shall seem expedient to them so to do, and have you thus then the names of those by whom you shall cause it to be made known to them, and this writ. Witness, &c. at which day before our said lord the king at Westminster, the said T. R. &c. came in their proper persons, and the sheriff of Middlesex, to wit, &c. returned, &c. [Here set out the return of *nihil* as on the writ]: therefore (as before) it is commanded to the said sheriff, that by good and lawful men, &c. he make known, &c. (as above) that they be before our lord the king at Westminster, on, &c. to shew in form aforesaid if, &c. and further, &c. the same day is given to the said T. R. &c. then, &c. and the said J. H. and J. F. at that day, having been solemnly required, came by A. B. their attorney, upon which the said T. R. &c. pray that execution may be adjudged to them of the debt and damages aforesaid, according to the form and effect of the said judgment, &c.

Plea, an agreement to pay, defend the wrong and injury when, &c. and say that the said T. R. &c. surviving executor as aforesaid (*executionem non*); because they say that after the recovery of the said judgment, and long before the suing forth of the said original writ of *scire facias* of the said T. R. &c. surviving executors as aforesaid, against them the said J. H. and J. F. as executors as aforesaid, to wit, on, &c. at, &c. it was agreed by and between the said M. H. in her life time, and the said Charles lord viscount M. &c. executors as aforesaid, in the life time of the said Charles lord viscount M. and sir T. A. that the said M. H. in her life time should pay or cause to be paid to the said Charles lord viscount M. &c. executors as aforesaid, and that the said Charles lord viscount M. &c. should

ake

REPLICATION.—PLEA.—NOT SEISED *.

take and receive of and from her the said M. H. a large sum of money, to wit, the sum of pounds of lawful, &c. and that on payment thereof the said M. H. should be wholly released, exonerated, and discharged of and from the said judgment in the said declaration mentioned: And the said J. H. and J. F. executors as aforesaid, in fact further say, that the said M. H. in her life time, in pursuance of the said agreement afterwards and before the suing forth, &c. to wit, on, &c. paid and caused to be paid to the said Charles lord viscount M. &c. executors as aforesaid, in the life time of the said Charles lord viscount M. and sir T. A. the said sum of pounds, whereby the said M. H. in her life time, according to the said agreement and in pursuance thereof, became wholly released, &c. of and from the said judgment in the said declaration mentioned, to wit, at, &c. and thus, &c. wherefore they pray judgment if the said T. R. &c. surviving executors as aforesaid, ought to have execution against them of the debt and damages aforesaid, &c.

And the said T. R. &c. say, that they, by reason of any thing by the said J. H. and J. F. above in pleading alledged, ought not to be barred from having their said execution for the said debt and damages; because protesting that the said plea of the said J. H. and J. F. by them above plead in bar, &c. the matter therein contained is not sufficient in law to bar them the said T. R. &c. from having their said execution against them the said J. H. and J. F. for their debt and damages aforesaid; protesting also that the said M. H. did not pay or cause to be paid to the said Charles lord viscount M. the said sum of, &c. as the said J. H. and J. F. have in their said plea in that behalf above alledged; nevertheless for replication in this behalf the said T. R. &c. say, that it was not agreed by and between the said M. H. in her life time, and the said Charles lord viscount M. &c. in manner and form as the said J. H. and J. F. have above in their said plea in that behalf alledged, and this they the said T. R. &c. pray may be enquired of by the country, &c.

Replication.

C. RUSKINGTON.

AND the said Evan Rees (one of the defendants) says, that the said plaintiff ought not to have execution of and for the debt and damages aforesaid against him the said Evan Rees, because he says, that he the said Thomas Jones, in the said writ of *seire facias* mentioned, was not at the time of the rendition of the said judgment in the said writ of *seire facias* mentioned, or at any time afterwards seised in his demesne as of fee of and in any of the said premises on which he the said E. R. is by the said return to the said writ of *seire facias* returned to be tenant as by that return is above supposed; and by which defendant is returned to be tenant; and, a similar plea, by another defendant; 3d, plea by both defendants of payment of the debt and damages to plaintiff's testator.

Plea, by one of the defendants, that defendant's testator was not seised of any of the premises on which the return to the writ of *seire facias* alledged at the time of the rendition of the return of the defendant; 2d, plea by another defendant.

* And Payment.

SCIRE FACIAS.—REPLICATION.

posed; and this, &c.; wherefore, &c. if the said plaintiff ought to have execution against him the said E. R. of and for the debt and damages aforesaid: And the said D. O. (another of the defendants) says, that, &c. [a similar plea, only substituting the name of D. O. instead of E. R.]: And for further plea in this behalf, they the said E. R. and D. O. by leave of the court here for this purpose first had and obtained according to the form of the statute in such case made and provided, say, that the said plaintiff ought not to have execution of or for the debt and damages aforesaid against them the said E. R. and D. O.; because they say, that after the rendition of the judgment aforesaid, and before the death of the said R. J. (plaintiff's testator), to wit, on, &c. the said J. J. (the other testator) paid to the said R. J. the said sum of money in the said judgment mentioned, to wit, the said debt and damages so thereby recovered as aforesaid; and this, &c.; wherefore, &c. if the said plaintiff ought to have execution of and for the debt and damages aforesaid against them, &c.

Replication to a
plea of death of
principal before
the suing out of
capias satisfaciendum
pleaded to
a declaration on
scire facias a
gainst bail.

AND the said plaintiffs say, that they by reason, &c. ought not to be barred from having execution against them for the said forty pounds by virtue of the said recognizance; because he says, that the several promises and undertakings mentioned in the said declaration, whereon the judgment aforesaid was recovered, were in the said declaration alledged to be made in, and that after the recovery of the said judgment in the said writ of *scire facias* mentioned against the said J. W. and before the suing, &c. the said writ of *scire facias*, to wit, on, &c. at, &c. the said Thomas sued and prosecuted out of the court of our said lord the now king before the king himself, then and still being held at Westminster, in the county of Middlesex, a certain writ of our said lord the now king of *capias* (a) *satisfaciendum* in and upon the said judgment directed to the then sheriff of Middlesex, by which said writ our said lord the king commanded the said then sheriff of Middlesex that he should take the said John if he should be found in his bailiwick, and him safely keep, so that he might have his body before the said lord the king at Westminster on, &c. to satisfy the said plaintiff the said fifty pounds, the damages and costs aforesaid recovered, and that the said then sheriff should have then there that writ, which said writ afterwards, and before the return thereof, to wit, on, &c. at, &c. was delivered to R. P. and R. C. so being sheriffs of Middlesex aforesaid, to be executed in due form of law; at which day, before the said lord the king at Westminster, came the said plaintiff in his proper person, and the then sheriff of Middlesex, and the said R. P. and R. C. returned on the said writ to our said lord the king at Westminster aforesaid, that the said John was not found in his bailiwick, as by the said writ and the return thereof duly filed

(a) The particular writ must be stated in replication, Carth. 4.

and remaining of record in the said court of our said lord the now king before, &c. more fully appears: And the said plaintiff further says, that the said John, at the respective times of suing out of the said writ of *capias ad satisfaciendum*, and of the return, and of filing the same, was and still is living and in full life, to wit, at, &c.; and this, &c.; wherefore, &c.; and that execution for the said forty pounds by them the said W. and R. in form aforesaid acknowledged, according to the form and effect of the said recognizance, may be adjudged to him, &c.

G. Wood.

To this replication Mr. Morgan demurred, and assigned for cause that he should have concluded to the country, and not with a verification. In consequence of this demurrer, a point, which has long been matter of doubt, became in some matter settled. In Hilary term 1779, it was argued by Mr. M. in support of it, and by Mr. Wood against it; and the court relying on the principal laid down in the case of *Filewood and Popplewell*, 2. Will. 65. that where either party introduces new matter, the other side shall have an opportunity of answering that matter, and here the plaintiff, by setting out the *capias satisfaciendum* in his replication, has introduced that as new matter, inclined for the plaintiff, but gave the defendants leave to withdraw their demurrer without costs. It may not be amiss to state some of the various opinions that have been entertained in respect of this point of pleading. After the determination in *Wilson*, it became the custom to make an averment in the replication of the existence of principal, a traverse of his death, and to conclude of course with

a verification; and in support of such practice, 1. Com. Dig. 519. 5. Mod. 107. and Carth. 4. were relied upon. However in Trinity term 1771, *Matter v. Cormick*, bail of Collins on demurrer to the replication thus framed on an idea that it should have concluded to the country, the Court, on argument, waived a decision, and hinted to the plaintiff to amend. In Trinity term 1773, *Brian v. Thorn*, bail of Rofs, and in November 1773, *Brian v. Oldfield*, bail of Rofs on the demurrer to the replication, containing an averment of the principal being alive, and concluding with a verification The Court also evaded a decision, and gave plaintiff leave to amend in Hilary term 1777, *Hanna v. Bristow*, bail of Reley on demurrer for concluding to the country, there was judgment for the plaintiff without argument. This determination, the result of necessity on the one hand, and of inattention in the other, occasioned the practice of concluding such a replication to the country, and doubtless the demurrer in the principal case.

AND the said defendants, by A. B. their attorney, come and defend the wrong and injury, when, &c. and say, that the declaration aforesaid, and the matters therein contained, are not sufficient in law for the said plaintiff to have his execution against them the said defendants for the damages, costs, and charges aforesaid, according to the force, form, and effect of the recognizance aforesaid, to be adjudged to him, &c.; to which said declaration, in manner and form as the same is above made and set forth, they the said defendants are not under any necessity, nor in anywise bound by the law of the land to answer; and this they are ready to verify; wherefore for want of a sufficient declaration in this behalf they pray judgment, and that the said plaintiff may be barred from having execution against them the said defendants adjudged to him, &c.: And for causes of demurrer in law, according to the form

Demurrer to a
declaration on a
scire facias.

SCIRE FACIAS.—PLEA—PAYMENT.

of the statute, &c. they the said defendants set down and shew to the court here the causes following, to wit, for that the said plaintiff hath in and by his declaration aforesaid declared against the said defendants of Trinity term generally, which bears relation to law to the first day of the said term, and yet in and by the declaration aforesaid it doth appear that the cause of action of him the said plaintiff, if any, did not accrue unto him the said plaintiff, until the last day of the said Trinity term, and for that the declaration aforesaid is in other respects informal, uncertain, and insufficient.

As to scire facis
with C. B. that
after affirmance
of exchequer,
defendant paid
well debt and
costs, as costs of
prosecuting by
reason of the de-
lay.

AND the said defendant, by A. B. his attorney, comes and defends the wrong and injury when, &c. and says, that the said plaintiff ought not to have execution to be adjudged to him for the said eighty-three pounds, according to the form and effect of the said recognizance, &c.; because he says, that after the affirmance of the said judgment in the said first above-mentioned original writ of *scire facias* mentioned, and before the being forth of the said first above-mentioned original writ of *scire facias* by the said plaintiff against him the said defendant, to wit, on, &c. at &c. the said J. L. in the said first above-mentioned original writ of *scire facias* mentioned, satisfied, and paid to the said plaintiff as well the damages, costs, and charges aforesaid so recovered by the said plaintiff against the said J. L. in the said court of our said lord the king, before the king himself here, to wit, at Westminster aforesaid, as also the said damages, costs, and charges adjudged in the said Exchequer Chamber, by reason of the delay of the execution of that judgment, on pretence of prosecuting the said writ of error; because the said J. L. did not prosecute the said writ of error; and this, &c.; wherefore, &c. if the said plaintiff ought to have execution to be adjudged to him for the said eighty three pounds, according to the form and effect of the said recognizance, &c.

C. RUNNINGTON.

Scire facias on
recognizance.

MIDDLESEX, to wit. Our lord the king sent to his sheriff of Middlesex his writ closed in these words, to wit, George the Third, &c. [Set out the first writ verbatim with the *teste*]; at which day, before our lord the king at Westminster, came the said plaintiffs and offered themselves against the said defendants, who came not, and the aforesaid sheriff of Middlesex, to wit, A. B. esquire and C. D. esquire, then and there returned on the said writ to our said lord the king, that the said defendants, &c. [recite the return of *non est inventus*]; and thereupon the said plaintiffs prayed another writ of our said lord the king to be directed to the said sheriff of Middlesex for the purpose aforesaid, and it was granted them; therefore our said lord the king by his certain other writ commanded the said sheriff of Middlesex as formerly he had com-

SCIRE FACIAS ON RECOGNIZANCE.

589

commanded him, that, &c. [recite the mandatory part of the *alias scire facias*]; at which day, before our said lord the king at Westminster came the said plaintiffs and the said sheriff of Middlesex, to wit, the aforesaid A. B. and C. D. esquires, returned on the said last-mentioned writ to our said lord the king at Westminster, that, &c. [recite the return of *non est inventus* on the *alias scire facias*]; thereupon the said plaintiffs offered themselves against the said defendants, who, on being solemnly demanded, came by A. B. their attorney, and thereupon the said plaintiffs pray that execution for the damages, costs, and charges aforesaid in form aforesaid recovered may be adjudged to them the said plaintiffs against the said defendants, according to the form and effect of the aforesaid recognizance.

V. LAWS.

I N D E X.

GENERAL DIVISIONS OR HEADS, AND LEADING TITLES IN THE CIVIL DIVISION.

SCIRE FACIAS.

ANALYSIS.

SCIRE FACIAS.

- I. Against BAIL, PLEDGES in REPLEVIN, (*See*
REPLEVIN, Proceedings in).
- II. To REVIVE, &c. on JUDGMENTS, and
against HEIRS and TERRE-TENANTS.
- III. Against EXECUTORS, &c. to REVIVE, and
on JUDGMENTS.
- IV. To REPEAL LETTERS PATENT.
- V. ON PARTICULAR STATUTES.
- VI. SCIRE FACIAS in ERROR.

SCIRE FACIAS against BAIL, PLEDGES in REPLEVIN, &c. (*See* REPLEVIN, and on RECOGNIZANCES.)

IX.

Page

493. Declaration on *scire facias* in B. R. against bail on their
recognizance after *scire facias* returned to the *alias*
scire facias.
495. *Entry on the roll of scire facias* against two bail, two
nihilis and award of execution.
505. Declaration on an *alias scire facias* against bail in B. R.
506. Declaration on an *alias scire facias* in palace court,
where one of the defendants appear, and the other
makes default against bail. *Plea*, an *alias scire fa-*
cias of death of principal after judgment, and be-
fore issuing of *capias ad satisfaciendum*. Replica-
- 507.

tion,

INDEX TO LEADING TITLES OR HEADS

Vol.
 EX:
 Page

PRECEDENTS IN
 BOOKS OF PRACTICE,
 REPORTERS, &c.

tion, that *capias ad satisfaciendum* issued, and that principal was then living.

512, 513. Plea to *scire facias* against bail. Replication.

516. Declaration on *scire facias* against bail on their recognizance.

518. Declaration on *scire facias* against bail. Plea, that defendant in original action died before any *capias ad satisfaciendum* returned.

520. Replication, *capias ad satisfaciendum* sued, and that principal was living at the return of the same. Rejoinder, that principal died before the return of *capias ad satisfaciendum*, and issue.

521. Replication to plea of death of principal before the jury went out, to *capias ad satisfaciendum* pleaded to a declaration on *scire facias* against bail.

526. Replication to plea of death of principal before the jury went out, to *capias ad satisfaciendum* pleaded to a declaration on *scire facias* against bail.

527. Replication, to plea that no *capias ad satisfaciendum* issued.

528. *Scire facias* on recognizance.

Scire facias against bail to a new original to be sued out in a cause removed from the palace court by an *habeas corpus*.

Plea, that the defendant in the original action died before any *capias ad satisfaciendum* returned against him. Replication, shews a *capias ad satisfaciendum* against the original, defendant returned in his life time. Demurrer and joinder,

Scire facias against bail by bill in debt, Lill. Ent. 387, 395.

Scire facias in case in trespass,

Entry on the roll of two *scire facias* against bail, and judgment by default,

Declaration on a *scire facias*,

Scire facias against bail on recognizance in case, Carth. 403. Lill. Ent. 395; return of *nihil*; six of the bail make default. Plea, by one of the bail, no *capias ad satisfaciendum*; by another, levy by *fiere facias*. Replication, *capias ad satisfaciendum* sued out, returned *non est inventus*; to the other, bail did not sue out any *fiere facias*; and issue; continuance; award of *venires*; as to the second issue *distingas juratores* awarded,

Plea to *scire facias* against bail, that the original judgment was recovered in Staffordshire upon an original writ into Middlesex, therefore the bail not liable on account of the variance in the county,

Entry of *scire facias* against bail after judgment against the principal in debt,

Scire facias against bail on a *habeas corpus* upon a recognizance taken before a commissioner, defendant in person,

Scire facias on a recognizance of bail in debt,

Entry of a recognizance on a *habeas corpus cum causa* in C. B.

Scire facias upon a recognizance of bail upon a *habeas corpus cum causa* in C. B.

Scire facias by administrator against bail after judgment affirmed in error,

1. Will. Rep. 61. b. 63. 64. 65.

1. R. Pr. B. R. 400.

Ibid. 402.

Ibid. 404.

Ibid. 406.

Ibid. 414. to 423.

Lill. Ent. 392.

1. R. P. C. B. 344.

Ibid. 347.

2. R. P. C. B. 404.

Ibid. 407.

Ibid. 409.

Ibid. 413.

Scire

PRECEDENTS in
BOOKS of PRACTICE,
REPORTERS, &c.

Scire facias against bail,
Scire facias against one of the bail in debt on bond,
Entry of recognizance of bail upon the roll,
Form of a declaration in *scire facias* against bail,

2. R. P. C. B. 415.
Lill. Ent. 387.
2. Crim. Pt. 77.
Ibid. 90.

Scire facias, *quare ex actione non* against eight bail above in
B. R. in *assumpsit*; writ returned *alias* and *nihil*; sixth
makes default; seventh, placed *no capias ad iudicium* until
sued out; eighth, *sum filius* executed. Replication, to
one *capias ad satisfaciendum* was sued out, and returned
non est inventus; to *scire facias*, none was sued out, and
verdict awarded,

Lill. Ent. 395.

Plea to *scire facias*, *quare executionem non* against bail, that he
is not the same person mentioned in the recognizance,

Ibid. 398.

Judgment against one of the bail, and the principal in *scire
facias* against them in C. B. *quare executionem non*. Plea
by a third, *nil tunc record* of the judgment. Rehearsal,
that there is such record, and final judgment for plaintiff,

Ibid. 403. to 405.

Scire facias against bail in the court of Chancery, according to
the custom of the court,

2. Ld. Raym. 1224.

Scire facias against the bail, on a recognizance on a *clausum
fregit* in C. B. with *ex actione* for one hundred pounds on pro-
mises; recovery of judgment by the plaintiff in the action,
and removal of the record into B. R. and that the same there
remained, award of *scire facias*; return and *alias*, default
of the principal and bailsmen of the bail; the bail's return
of *nihil* as to the principal; judgment against the principal,
and prayer of execution against the bail; prayer over of the
scire facias which was set out; they likewise pray over of
the recognizance which is set out, together with the *clausum
fregit* and *ex actione*; they likewise pray over of the original
writ, and the judgment against the principal, which are
likewise set out. Plea, that no judgment was obtained
against the principal before the issuing of the *scire facias*.
Replication, that judgment was given. Special demurrer,
with causes and joinder,

Lill. Ent. 406. to 411.

Scire facias against bail in error on a judgment recovered there
to the exchequer chamber, where the judgment was af-
firmed.

Ibid. 460.

Scire facias in replevin against sheriff for insufficient pledges by him taken for re-
turn of cattle after *scire facias* against pledges, and no return. Special de-
murrer, with cause, *Off. Br.* 243. *Mo. Int.* 131, 147, 158.

Scire facias in *ban* after recovery in debt, *Cus.* 681.

Scire facias on recognizance in court, *Off. Br.* 279.

Entry of *scire facias* on recognizance in court, where the recognizer confesseth
judgment and execution thereupon, *Mo. Int.* 369. On recognizance before
chief justice out of court, *Off. Br.* 284. Before a judge, 331. Upon a judge-
ment by writ of privilege, *Bro. Met.* 340.

Against bail on recovery, and judgment in B. R. *Hanf.* 237. 1. *Inst. Cl.* 152. 318.
Off. Br. 315. Against principal, debtor, and bail, for that the debtor did not
satisfy the judgment, nor tender his body in execution, *Mo. Int.* 370. On re-
cognizance against bail only, *Ibid.* 371. 1. *Inst. Cl.* 155.

- Scire facias* on recognizance forfeited on a writ of privilege against bail, because they had not the defendant in court to satisfy plaintiff after recovery had by *cognovit actionem*, *Off. Br.* 311. *Pl. Gen.* 192. On a recognizance upon privilege against defendant and his bail, and an *elegit* awarded, *Bro. Met.* 351.
- Scire facias* after the year and day against bail in debt, and for damages, *Cl. Man.* 41. *Off. Br.* 277. Plea, that *no capias ad satisfaciendum* issued against the defendant, according to the custom of the court, 1. *Injl. Cl.* 243. Replication sets out *capias ad satisfaciendum*.
- Plea by bail, *nil tuel record.* Replication, *quod habetur*, 1. *Injl. Cl.* 250.
- Entry of a judgment by default against a cognizor on a *nihil* returned, *Off. Br.* 261.
- Scire facias* on recognizance taken in B. R. *Han.* 237. Before a judge of C. B. *Bro. Met.* 340. 344. Count on a recognizance taken before chief justice of C. B. Plea, *nil tuel record.* Replication, that there is, *Bro. R.* 431.
- Entry of a judgment on *scire facias*, when cognizor on *scire facias* returned appeared, and confessed, *Off. Br.* 262.
- Scire facias* against defendant, and one bail on *capias* in debt, *Ibid.* 263. By executor, 269. Against one bail only in a writ of error in B. R. 263.
- Scire facias* against two bail and defendant on original in debt, *Off. Br.* 270. 1. *Bro.* 319. On special bail in debt, *Ibid.* 325. After judgment obtained, *Off. Br.* 277.
- Scire facias* against bail in case after judgment, *Bro. Met.* 312.
- Scire facias* against bail of a judgment in county of city of York. Plea, that original is in the county of York at large, and no original in the county of the city. Replication, by *capias*, an original in B. directed to the sheriff of York, and laid and declared on in the county of the city. Rejoinder, no judgment against the principal laid in the county of York confesses that there was a recovery in the county of the city, and traverses that in such case bail is liable. Demurrer and judgment for defendant, *Lev. E.J.* 170.
- Against bail where plaintiffs brought original in debt, and defendant appears, and judgment by *nil dicit*, and death of one of the plaintiffs, *Bro. Id.* 578.
- Return of *scire facias* against bail, and *nihil habent nec sunt inveniunt*, *Off. Br.* 278.
- Scire facias* of part of debt recovered and damages. *Off. Br.* 319. Appearance, and after imparlance, pleaded *nil tuel record.* Replication, *tuel record*, and *dies datus* to inspect the record. Judgment for plaintiff. *Off. Br.* 278.
- Against defendant and two bail, on a plaint in the borough court of Southwark, removed by writ of our lord the king by mandate; return *nihil alius scire facias*; defendants appear and plead *nil tuel record.* Replication, *tuel record* on the day of suing out first writ of *scire facias*, which was removed by writ of error in B. R. and day given to bring in the record, *Off. Br.* 281.
- Scire facias* by executor against bail on judgment of debt and damages, *Off. Br.* 297.
- Scire facias* on a return before justices acknowledged in the county where cognizor resided, *Off. Br.* 290.
- Against bail on *audita querela*, and judgment by default, *Off. Br.* 300.
- Plea, by one that he paid the debt and damages. Replication, did not pay. and issue; plea allowed by the court, *Ibid.*
- Scire facias* against defendant, and bail appeared in court, and judgment by *nil dicit*, *Off. Br.* 300.
- Scire facias* against bail of prayees in aid to satisfy plaintiff (in *scire facias* to execute a fine) of the issues in the mean time. *Off. Br.* 303.
- Scire facias* and enquiry against the late sheriff for not taking sufficient pledges in replevin, according to the statute, after return had, and return of beasts eloiigned, *Off. Br.* 305.
- Return to *scire facias* against defendant and two bail, *scire facias* two bail, and defendant *non est inveniunt*, *Off. Br.* 316.

IN THE CIVIL DIVISION.

Scire facias against defendant and one bail, where defendant is outlawed, which was reversed, and afterwards judgment for plaintiff, *Off. Br.* 322.

Scire facias by husband and wife on recognizance in C. B. where defendant appears and impails, *Off. Br.* 322. 325. On recognizance in chancery, and from thence to B. R. by *mutuus*, *Off. Br.* 329.

Scire facias (*reorn habendo*) against defendant and bail, for chattels or the price of them, *Off. Br.* 333. 345. On recognizance taken, *Ibid.* 332.

Scire facias on recognizance; plea in abatement, that there were more than fourteen days between the *teste* and the return, 1. *Lut.* 24. Demurrer.

On a recognizance of bail by H. defendant at the suit of plaintiff. Plea, that one *capias ad satisfaciendum* issued in London against H. and *non est inventus testatum* to S. by which defendant was taken in execution and continued until plaintiff requested the sheriff to let him go at large, *per quod*, &c. Replication, no writ, &c. Rejoinder, writ issued, &c. and concludes to the country. Demurrer and judgment for plaintiff, 2. *Lut.* 1269.

Scire facias against bail. Plea, that principal was taken in execution on a *ca. ad fa.* where no such writ in execution, but another writ had issued, on which *non est inventus* was returned, 2. *Lut.* 1272.

Scire facias against bail, defendants crave oyer of the writ of *sci. fa.* and the recognizance is in these words, by which it appears that defendants were bail for O. at the suit of plaintiff, who never administered, but judgment is for him as administrator, and for this variance, and also for that it is not shewn that a *ca. ad fa.* issued against O. Demurrer, but judgment for plaintiff, 2. *Lut.* 1279.

Scire facias against executors of one bail, and two others on recognizance taken before commissioners in county of Y. Judgment against two on two *nihil* returned; *executrix* pleads in abatement that the *sci. fa.* ought to be brought in county of E. *respondens* after awarded, and plea that no writ of *ca. ad fa.* issued against principal before the first writ of *sci. fa.* Replication that he had sued out *ca. ad fa.* returnable on the morrow of the Holy Trinity, and *non est inventus*. Rejoinder, that *ca. ad fa.* was in fact delivered to sheriff after the morrow, &c. and since the return of the first *sci. fa.* and plaintiff *per proutem*, &c. procured sheriff to make the return, and traverse delivery of writ before the day of the return adjudged on. Demurrer, 1st, that the action may be brought in Middlesex or York; 2d, that the traverse immaterial, 2. *Lut.* 1282.

Scire facias against bail for residue of debt. Plea, payment by principal. Replication, *non*, *Thef. Br.* 258.

Against bail brought by *seme sole*, who after original judgment took husband. Plea *nul tiel record*. Replication, *id.* &c. *Thef. Br.* 265.

Plea to *sci. fa.* that an elegit was sued out on the same judgment, goods taken, and lands extended. Replication, *nul tiel record*. Rejoinder, *habetur* and judgment for plaintiff, *Ibid.* 266.

Scire facias against *pleges in replevin* before the sheriffs of London, where the plaintiff was removed in C. B. by *certiorari*; the bail prays oyer of the *certiorari* and return of the plaintiff levied before the sheriff, and of the count in the hullings. Demurrer and judgment for plaintiff, *Thef. Br.* 274.

Scire facias against bail in c. s. Plea, another *sci. fa.* pending. Replication, *nul tiel record*, *Ibid.* 280.

Scire facias on recognizance in C. B. *Ra.* 546. *Vet. Int.* 9. *Vet. N. Br.* 163. *Reg. Jud.* 6. 2. *Br.* 12. 8. 133. *Br.* 269. 279. In debt, payable on several days, *Ra.* 546. By executor, *Ibid.* 546. *Reg. Jud.* 25. 58. *Ass.* 431. *Br.* 237. By survivor, 2. *Br.* 118. On recognizance before a judge out of court, *Br.* 261. 264. 279. *Co. Ent.* 634. *Molle*, 148. 635. On recognizance in an inferior court sent into chancery by *certiorari*, and from thence into the bench, *Ra.* 547. *Vet. Int.* 114. *Br.* 130. In chance y, *Br.* 130.

Against

INDEX TO LEADING TITLES OR HEADS

- Against *heir* of lands on recognizance made by the father, *Reg. Jud.* 70. *Tb. f.* 109.
Br. 262. Against terre tenants on recognizance, *Co. Ent.* 546. *Ra.* 546. On
mortuus returned, *Reg. Jud.* 57. 30. *E.* 3. 23. By survivor against terre-tenant on
 recognizance, *Br.* 266.
- On recognizance, with condition to perform covenants. Plea, performance gene-
 rally. Replication, that the lands were not of a certain annual value, *Co. Ent.*
 634.
- Scire facias* against pledges in hundred court in *replevin*, where sheriff on *pluries* re-
 turned cattle cloigned, *Ra.* 569.
- Plea, *nil tuel record* of recognizance, *Tbo. Ent.* 285.
- Entry of *sci. fa.* against bail, who plead that defendant died before *sci. fa.* or *ca. ad*
fa. Replication, *ca. ad fa.* found out, returned, and filed before the issuing of the
 first *sci. fa.*
- Scire facias* against pledges of cattle taken in withernam before a certain day to be
 delivered, imparlance, *Morle* 141. *Br.* 257. Against plaintiff and bail in
auxilia querela, where defendant obtained in liquidation thereon against plaintiff, *Morle*,
 139. where plaintiff did not prosecute with execution. Plea, that plaintiff sued out
vi. fa. which he delivered to the sheriff, who did nothing thereon, nor sent the
 writ, *per quod* plaintiff sued out another writ, which he delivered to the sheriff,
 and before the return of the second writ, defendant brought the *sci. fa.* Replication,
 that plaintiff did not deliver the first *vi. fa.* to the sheriff. Judgment for
 defendant, *Co. Ent.* 618. 2. *Br.* 134. *Tb. f.* 110. *Br.* 265. *Her.* 50.
- Plea of *nil tuel record* by two bail separately, and day given to produce the record,
Her. 278.
- Plea by bail, that defendant surrendered himself, and plaintiff refuse to take him in
 execution. Replication, that he did not surrender, *Morle*, 42. That defendant
 died before *non est inventus* returned on the *ca. ad fa.* *Ibid.* 169.
- To *sci. fa.* against A. and B. bail, A. makes default at the return of the *alias sci. fa.*
 and judgment against him. Plea by B. that defendant, after the judgment, paid
 the debt and damages to plaintiff. Replication, that he did not pay, *Morle*, 111.
- Scire facias* against defendant and two bail on *capias*, in debt in C. B. on judgment
 obtained by plaintiff, 2. *Br.* 127. By executor, where plaintiff afterwards
 died, 2. *Br.* 128. Where plaintiff after judgment remitted part of the debt and
 damages, *Morle*, 42. Against two bail on *capias* in debt, *Br.* 272. Against
 executor of one bail on *capias* in debt, *Morle*, 104. Against two bail on *capias* in
 covenant, at the suit of two plaintiffs, one of whom died after judgment, *Her.* 277.
- Against defendant and two bail on plaint in London, removed by writ of privilege,
 sheriff return of *sci. fa.* to two, who appear and imparl; another hath nothing;
 another *sci. fa.* awarded against him; *non inform.* by two, and *nele pro qu* to the
 other, 2. *Br.* 129. Against defendant and two bail on writ of privilege, in case
 whereon judgment certified into B. R. by writ of error, 2. *Br.* 140. Against two
 bail on a writ of privilege in debt, 3. *Br.* 361. Against defendant and one bail
 on plaint in debt removed out of the sheriff's court in London, whereon judgment
 for plaintiff, *Her.* 593. *Morle*, 165. Against defendant and two bail on writ of
 privilege in London, and judgment in debt, *Br.* 249. 269. Where defendant
 did not appear to original purchased, *Ibid.* 250. Against defendant and two bail on
 writ of privilege at the several suits of A. and B. in debt, whereon judgment ob-
 tained by *nisi tuit* by A. *Ibid.* 271.
- Scire facias* against plaintiff in *replevin*, and two pledges to prosecute for a return,
 where plaintiff afterwards did not prosecute him; second, deliverance and avowry
 for rent charge, imparlance, *Morle*, 95. Plea thereto, tender of the value of the
 cattle. Replication, did not tender *relitā verjuracione cognovit*, &c. *Co. Ent.*
 637.

SCIRE

II. SCIRE FACIAS to REVIVE, &c. on JUDGMENT
against HEIRS and TERRE-TENANTS.

Vol.
IX.
Page

PRECEDENTS in
BOOKS of PRACTICE,
REPORTERS, &c.

499. *Scire facias* to revive judgment in ejectment against surviving defendant and *terre-tenant*.

525. Plea by one of defendants, that defendant's testator was not seised of any of the premises by the return to the *sci. fa.* alledged at the time of the rendition of the judgment, and by which defendant is returned to be *tenant*; and similar plea by both defendants of payment of the debt and damages to the plaintiff's testator.

Scire facias by an *administrator de bonis non* against heir at law and terre-tenants. Double plea of terre-tenant, that the money on the judgment was paid, and that the defendant in the original judgment was not seised in fee of the messuage, &c. in the writ of *sci. fa.* Replication, to the first part that the money was not paid, issue thereon. To the second part, that the defendant in the judgment was seised in fee, and did by lease and release convey to make a tenant to the præcipe in order to suffer a common recovery, the uses thereof declared; recovery, writ of entry, parties appear, writ returned, tenant vouches over; count against first vouchee; first vouchee vouches over; count against common vouchee; common vouchee pleads imparlance; common vouchee makes default. Judgment against the tenant; against first vouchee; against common vouchee; writ of *seisin*. Demurrer to the replication to the plea to the *sci. fa.* and joinder.

2 R. Pr. C. B. 379. to 389.

Plea by terre-tenants, that defendant in the action was not seised,

Lill. 3 Ent. 391.

Judgment for the plaintiff on plea of disclaimer by a terre-tenant in a *sci. fa.* by the *executrix of the executor* of the recoveror on a judgment against the heir of the obligor, in debt on bond to be levied on the reversion of certain freehold premises of inheritance, subject to present leases for life and years when such reversion should fall into possession,

Ibid. 383.

Scire facias by the acting *executor* (the other having renounced) of the executor of the recoveror against the heirs and terre-tenants of the recoveror of judgment in debt on bond *quæ executionem non*. Sheriff's return no heir nor terre-tenant; *suggestion* of lands in several counties of Oxford, Southampton, and Middlesex, and the several sheriff's returns of *scire feci*; proffer of letters testamentary, and execution prayed, and plea of outlaway in the plaintiff's testator in another suit yet unreversed,

Ibid. 384.

Scire facias by the recoveror against the terre-tenants of the recoveree in debt on judgment directed to the sheriff of the

INDEX TO LEADING TITLES OR HEADS

- debt, *Mo. Int.* 375. Against tenant, by the curtesy after the death of his wife, an heiress; as also against another heir, *Ibid.* 375.
- Scire facias* against brother and heir, tenant of lands on a judgment in debt in London, and sheriffs return that there are no tenants. *Testatum* awarded against terre-tenant in the county of R. *Off. Br.* 264. Entry, and sheriff of R. returns *scire feci*, the heir and terre-tenant, and W. alone is retained tenant of the manor and lands, who made default; judgment thereon, and writ of enquiry awarded, *Ibid.* 264.
- Against R. tenant, by the curtesy, as husband of S. sister and heiress of F. and F. cousin, and the other heir of G. on a judgment recovered against R. and S. his wife; and said F. *Off. Br.* 265.2. *Bro.* 139.
- Judgment by default on an *alias sci. fu.* against terre-tenant, and sheriffs return *scire feci*, and *elegit* awarded, *Off. Br.* 273.
- By administrator in debt, against terre-tenants on a recognizance before chief justice of C. B. *Off. Br.* 274. Sheriffs return to *alias sci. fu.* that there are no tenants, *Ibid.* 273.
- For arrears of annuity against an heir, and *nil tici record*; and *esoppel* pleaded by record in court, *Bro. Met.* 368. 369.
- Scire facias* to execute a fine by the heir of cognizee after death of tenant for life in the tenements into which one entered, *Off. Br.* 276.
- Scire facias* brought by one executor against heir and terre-tenants, on a judgment before the protector. Plea in *abatement*, non-summmons of one terre-tenant. Replication, never seised; and demurrer, *respondeas oster*, *7 hof. Br.* 182. Plea over *capias ad satisfaciendum* sued on the judgment, and sheriff permitted defendant to escape; and plaintiff brought an action against the sheriff on the judgment, reciting the taking in execution and escape, and had judgment against the sheriff, who paid a large sum of money, which he accepted in discharge of the several judgments aforesaid. Demurrer, joinder, and judgment for plaintiff, *Ibid.* 284.
- Plea, that defendant was tenant at will, *Off. Br.* 341.
- Scire facias* by heir, who after entry of *scire facias* pleads that tenements descended to him, and thereupon prays execution, *Ra. Ent.* 587. By son and heir and executor of a will, on a judgment by the father in an *affize of nuisance*; *nil dicit* thereto, *Moile*, 158.
- By administrator against terre-tenants after insufficient return of extent on statute merchant, 3. *Br.* 368.
- After issue joined, one of the tenants died; *alias sci. fu.* by journeys accounts, another tenant died, and another writ by journeys accounts one of tenants makes default, and afterwards died; his wife and sister come and pray to be received, and that the plaint may remain because of minority, *Moile*, 132.
- Against terre-tenants on judgment in debt, *Br.* 223. 213. *Testatum* thereon, *Br.* 223. 243. 255. 2. *Br.* 139. Where sheriff on *scire facias* against the heir returns no lands, 2. *Pr.* 114. Against heir seised of lands of the father, 2. *Er.* 112. *Br.* 236. 262. 238. 254.
- Scire facias* against cousin and heir and terre-tenant, 2. *Br.* 139. *Testatum* to Lancaster against terre-tenant, where plaintiff after judgment is made a baronet, 2. *Br.* 248. Against terre-tenant, *Moil.*, 119. In different counties, *Ibid.* 194. Where sheriff returns *mortuus*, *Br.* 241. In London, where sheriff returns no tenants.
- Testatum*, that defendant had lands in two counties, and *scire facias* awarded, *Ibid.* 266. By administrator of goods not administered against terre-tenants, *Ibid.* 243. *Testatum* awarded out of London against terre-tenants in debt; continuances; return *scire facias* to several tenants; imparlance, and several pleas, *Co. Ent.* 619. 623. Where one is returned terre-tenant, and no mention of the land, *Co. Ent.* 620. *Her.* 326. Where he is named heir and terre-tenant, *Co. Ent.* 622. Against terre-tenants in debt, and the heir returned terre-tenant

IN THE CIVIL DIVISION.

- nil dicit*, 1. Br. 99. Declaration against terre-tenant on *scire facias*, where no mention made of lands in the return, 3. Br. 372. Against *heir*, now tenant of the deceased father's lands, and plea thereon, 2. Br. 135. *Testatum scire facias* by two husbands and their wives, executrices, against terre-tenant on a judgment obtained by executor for the term, *Co. Ent.* 623.
- Scire facias* by lord of the manor, being ancient demesne, against the *heir* and *terre-tenant* to annul a fine levied of houses, &c. of the said manor, return *nil* against the *heir*, and *scire facias* against tenant, who comes and pleads that fine ought not be made void on *fine facias*, but by original writ of *decent* out of chancery. *Demurrer*, 3. *Lev.* 415.
- Entry of *fine facias* against terre-tenant, and sheriff's return *scire feci*, two terre-tenants, and judgment by default against one; another appears and imparls, *Off. Br.* 2, 7.
- Entry of *scire facias* against heir and terre-tenants of manor and divers lands and tenements, whereof sheriff returns *scire feci* the heir and terre-tenants, who appear and imparl. *Off. Br.* 281.
- Entry of *scire facias*, and *testatum scire facias* in debt, against terre-tenants, and W. is alone returned son and *heir* and terre-tenant of lands, which descended to the son of the property in fee simple, and that there are no other tenants, *Off. Br.* 286.
- Scire facias* by *administrator de bonis non* of administrator of surviving plaintiff, against *heir* and terre-tenant. Cited to the bishop of Durham; mandate to the sheriff; answer *scire feci*; the cousin and *heir* of debtor, who is sole tenant of the manor and lands which were of the deceased in fee simple, and there are no other tenants, *Off. Br.* 289.
- Scire facias*, terre-tenants in debt, and sheriff's return *scire feci* to three, who appear, and after several imparlances by two *non sum informatus*; other pleads *quodad.* &c.; that the debtor long before the rendition of the judgment made a marriage settlement by lease and release, which marriage was had, and the parties should stand seised to the uses in that indenture, *Off. Br.* 292. That *assault* is in being, and that the messuage and piece of land in the indenture specified, and the cottage in the return mentioned, are one, *Off. Br.* 295.
- Scire facias* in *partition* by the *heir* to have execution where the father died after judgment of partition, with the number of the rolls and marks, *Off. Br.* 297.
- Scire facias* by *baion* and *feme*, on a recognizance made to *fine sole*, against tenant of the land, *Pl. Gen.* 190. *Off. Br.* 323.
- Scire facias* against terre-tenants, on return by administrator, with number of the roll, *Off. Br.* 300.
- Testatum scire facias* by sheriff of Suffolk against terre-tenants, who returns C. who pleads that debtor before judgment enfeoffed H. H. in fee, who were seised till the debtor entered and disseised, and feoffees re-entered, and enfeoffed defendant. Replication, that the father of the debtor being seised died, and descent to the debtor, who was seised before and after judgment rendered, and afterwards enfeoffed feoffees, &c.; and traversed that debtor disseised feoffees before judgment pleaded. This held ad, *Off. Br.* 302.
- Testatum scire facias* against terre-tenants in two counties; sheriff returns *scire feci*; terre-tenants of one county make default, and judgment; and of the other county, pleads that there are two men of the same name at S. one of them called T. R. senior, and the other T. R. junior. Replication, protesting that T. R. senior, never was commorant at S.; for plea, that T. R. in the return of the writ named, acknowledged; and issue, *Off. Br.* 303.
- Scire facias* for the value and damages in *assault* against the *heir*, who holds lands of his brother. Appearance, and *nil dicit*, *Off. Br.* 303.
- Testatum scire facias* in debt against heir and terre-tenant, on a judgment recovered against the plaintiff's father, *Off. Br.* 305. By executor, terre-tenant, and sheriff's return

- return one tenant of the manors of W. L. W. and C. who appears, and says another was tenant of the debtor's tenements, which are chargeable with the judgment, therefore *scire facias* against him and the other, *Ibid.* 306. *Scire facias* against terre-tenant, *cum testamento*, *3 C. Off. Br.* 325. By two co-heiresses, to have seisin of lands recovered by judgment in writ of entry on disseisin in *se quibus* by his ancestors, *Ibid.* 30.
- Scire facias* to terre-tenants and paceners after the death of their ancestors, *Off. Br.* 340. For debt, against the heir, and judgment, *Ibid.* 338.
- Plea to *scire facias*, that J. and J. seised demised to defendant at will, and on the day of suing out original he had nothing, &c. Replication, that he was tenant on the day, and issue, *Off. Br.* 345. Plea, that defendant was seised of the tenements, and enfeoffed one B. which estate, &c. Replication, did not enfeoff, *Ibid.* 344.
- Award thereof against terre-tenants, *Ibid.* 342. *Scire facias* against heir, *Han. Off. Br.* 344. Against terre-tenants, 1. *Inst. Cl.* 145. *Hanl.* 252. By the heir, against terre-tenant, *Off. Br.* 333. On recognizance, against terre-tenant, *Ibid.* 344. Entry of *scire facias* on a fine levied against tenants who severally hold rents and lands, *Ibid.* 346. Entry of *scire facias* against terre-tenants at the time of rendering the judgment, *Ibid.* 277. 281. *Testatum scire facias* in another county, against terre-tenant where sheriff returns no terre-tenants in his bailiwick, *Ibid.* 282. Against terre-tenant, where it is alledged defendant died seised, &c. *Ibid.* 300. *Testatum scire facias* against tenants, *Bro. Met.* 360. Against terre-tenants, on judgment against the heir in debt, 1. *Inst. Cl.* 321. *Scire facias* against terre-tenants, 1. *Bro.* 323. Sheriffs return no tenants, and *testatum* to sheriff of G. 1. *Bro.* 324. 1. *Inst. Cl.* 321. *Scire facias* against terre-tenants, who entered after judgment rendered, *Off. Br.* 332. Plea by tenant, that strangers whose estate, &c. had, were seised on the day of suing out the writ, *Ibid.* 333. 340. Plea by terre-tenants, that he was seised by feoffment until tenant in *formedon* by fraud between him and commandant had entered, with the intention that demandant might sue out against her, and that on the first day he might confess the action, *Ibid.* 335.
- Scire facias* against terre-tenants, on a judgment in debt in London; sheriffs return that there are no tenants; *testatum* against terre-tenants in county of N. and sheriffs return *scire feci* one P. T. tenant of divers messuages, and that there are no other tenants. Appearance of P. and after special imparlance, and further special imparlance, pleads in abatement, that one G. and J. were tenants of two messuages in county of S. of which the debtor was seised at the time of rendering the judgment, and not returned, *Demurrer*, 2. *Ven.* 101.
- Scire facias* by executors, on a recognizance in chancery against cognizor, return cognizor dead; and against heir and terre-tenants return *scire feci* J. H. and T. tenants of two messuages in G. likewise R. and A. tenants of twelve houses in S. Plea in abatement, that one R. was tenant of one messuage in London, and *non-summions*; *scire facias* awarded to sheriffs of London, return *scire feci*, and thereupon that defendant answer over, 2. *San.* 7. R. and A. plead that one S. being seised enfeoffed cognizor and T. *per quod* cognizor and T. were jointly seised, and died, and traverses that cognizor was sole seised, but does not say that the tenements came to T. Replication, confesses feoffment and joint seisin, but that after recognizance of the debt cognizor and T. sold to defendant tenements (by indenture enrolled in chancery), whereof they themselves are returned tenants, *per quod* a moiety of tenements is chargeable with the debt, and traverses that cognizor died seised, *Ibid.* 9. 12. J. H. and T. plead, that one R. being seised by lease and release, sold to W. in trust for the cognizor, and that W. and cognizor sold to defendant, and traverse that cognizor at the time of the recognizance of the debt or afterwards was seised. Issue on the traverse, *Ibid.* 11. 13. *Demurrer* to replication.
- Scire facias* against terre-tenant by *elegit*, where part had been levied by profits, and

IN THE CIVIL DIVISION.

and residue tendered, 2. *San.* 68. Plea, that plaintiff after delivery of lands in execution had kept him out, *Ibid.* 68.

Entry of *scire facias*, and *testatum*, and *elegit*, and inquisition returned against terre-tenants, *Bro. Met.* 290. Entry against *heir*, on judgment against his father in debt, and *nihil* returned, and *testatum* into another county against tenants of the lands, *Ibid.* 358. *Scire facias* by heir, tenant, against the vouchee in writ of entry in the port, *Off. Br.* 343. Against defendants and terre-tenants, 1. *Lut.* 854. Return, that one of defendants dead, by which one J. G. was terre-tenant of a moiety, &c.; and the said J. G. by his attorney says, that there was an original tested, 1. Mar. 32. Car. 2. filed of Easter term of the same year, and also a writ of summons and *certiorari* awarded to *custos brevium*, and writs certified in *hæc verba*, and entered, *Ibid.* 855.

Scire facias for tenant by *elegit* after the end of term of years made by the debtor, where the lessee during the term was expelled, *Bro. Met.* 364. Against tenant by *elegit*, to account, *Ibid.* 371.

Against terre-tenants, where defendant in the judgment sold his lands (after plaintiff's judgment), and died, *Bio. Vad.* 380.

Scire facias to the heir on *scire feci* returned, who pleaded that no goods came to his hands, *Thef. Br.* 242.

Plea by terre-tenant, another judgment rendered for the same debt against defendant in the original judgment, and another which was taken on *cepas ad satisfaciendum* discharged by consent of plaintiff. Replication, protesting that he did not sue out *cepas ad satisfaciendum*, for plea, that it was not discharged by his consent, *Thef. Br.* 270.

Plea by terre-tenants on *scire feci* returned, that the defendant in judgment was never seised in fee simple. Replication, that he was seised in fee (*et hoc, &c.* which is bad), *Thef. Br.* 272. 273.

That defendant is cousin and heir, and not plaintiff, *Vet. Int.* 75.

Plea to *testatum scire facias* by administrator, against terre-tenants in debt, that there is another terre-tenant of the manor in another county, not summoned. Replication, that J. seised made a feoffment to uses in tail of the lands that descended to the debtor, and traverses seisin in fee, *Moile.* 150.

Scire facias by surviving executor against the son and heir on a judgment in debt against the father, and judgment by default on two *nihil*s returned, 2. *Br.* 122. *Br.* 235. *Scire facias* by executor against heir, to whom lands descended from the father, *Imparance*, and plea runs per descent, *Moile.* 117. *Br.* 235.

Plea, that debtor, seised before judgment, made a feoffment to uses in tail of lands that descended to defendant in tail. Replication, that debtor at the time of the judgment rendered was seised in fee, and traverses feoffment to uses, *Moile.* 113.

That debtor, seised before judgment, levied a fine to his own use for life, remainder to his wife, now tenant, by jointure. Replication, that debtor, after judgment, was seised in fee, and so died seised, and traverse that fine was levied to said uses, *A/b.* 24. Plea, a returned tenant of lands in B. not mentioned, that he is tenant of the messuage and certain lands, and that debtor was not seised thereof at the time of the judgment or afterwards, and that he is not tenant of any other lands. Like plea by B. Plea in abatement by C. demise to him for years by debtor. Like plea by another. Replication, lease has expired, and C. tenant by disseisin, &c. Demurrer, *Her.* 327.

Plea to *scire facias* against a tenant of certain lands of deceased debtor, that lands were extended on a recognizance in the court of wards, and averment that lands in the writ and inquisition are the same lands. Replication, not the same, 2. *Br.* 135. That debtor was not seised of the lands at the time of the judgment or afterwards, *Co. Inst.*

INDEX TO LEADING TITLES OR HEADS

Plea (by tenant of lands not specified in the return but in the declaration), to part, *non-tenure*; to other part, that debtor before the judgment made feoffment to his own use for life, remainder to whom he should devise: and he devised lands to defendant; and traverses that the debtor was seised in fee at the time of the judgment or afterwards; to residue, that debtor before the judgment demised to defendant for years, and since levied a fine to J. who released to defendant, and traverses. Several issues thereon. 3. Br. 373.

Plea by terre-tenants, that one W. is tenant of the messuage which was of the debtor, and is not returned tenant. Replication, that defendant is sole tenant of all the lands, and traverses that W. was tenant of messuage which was of the debtor at the time of the rendition of the judgment, 2. Br. 139.

Plea in abatement, that H. seised demised to defendant and his wife for one year, for that H. is not returned tenant of the freehold. Demurrer, *Co. Ent.* 624.

Plea, that debtor was seised of the lands that descended to defendant, who levied a fine; with remainder. Demurrer, *Co. Ent.* 627.

That H. seised, made feoffment to uses; and lands descended to debtor in tail, and from him to T. who levied a fine to defendant in fee. Demurrer thereto, *Co. Ent.* 691. That the father of the debtor devised to *per se* for life who demised to T. for years, and traverse that defendant was tenant of the freehold at the day of suing out the writ or afterwards. Replication, that he is tenant, *Co. Ent.* 620.

SCIRE FACIAS TO REVIVE, &c. AND ON JUDGMENT.

(See Pleas in Abatement to *Scire Facias* and Replevin.)

Vol.
16.
Page

PRECEDENTS in
BOOKS of PRACTICE,
REPORTERS, &c.

19. *Scire facias* by assignee of two bankrupts, copartners, to revive a judgment obtained by them against defendant before bankruptcy.

20. *Scire facias* in C. B. by assignees of bankrupt, to revive judgment in assumpsit, which had been once revived by *scire facias* by the bankrupt before his bankruptcy.

29. Declaration on *scire facias* to revive judgment in B. R. Plea, that there is no such record of recovery of judgment. Replication, and issue.

30. Plea to *scire facias*; an *elegit* sued out (a sham plea). Replication.

31. Declaration on *scire facias* to revive judgment in B. R. Demurrer to declaration on *scire facias*.

32. Plea to *scire facias* in C. B. that after assumpsit in exchequer defendant paid as well debt and costs, as costs of protecting by reason of the delay.

Scire facias to revive a judgment after the year and day,

1. R. P. B. R. 426

Scire facias to revive, &c. where part is satisfied under

Ibid. 427
Entry

Entry of two <i>scire facias</i> , and <i>mhils</i> returned, and judgment thereon, against an <i>administratrix</i> , on a judgment against intestate,	<i>Ibid.</i> 428
<i>Scire facias</i> against <i>executors</i> ,	<i>Ibid.</i> 431
<i>Scire facias</i> for an <i>administrator</i> of a plaintiff dying after interlocutory judgment, and before enquiry executed,	<i>Ibid.</i> 433
<i>Scire facias</i> against <i>administrator</i> of a defendant dying after interlocutory judgment,	<i>Ibid.</i> 433
<i>Scire facias</i> in case on promises. Demurrer. Judgment for plaintiff, and a writ of enquiry awarded, and before final judgment defendant dies, and the judgment revived according to the statute,	<i>Ibid.</i> 437
<i>Scire facias</i> after a year and a day, on a judgment in debt, Entry of the judgment,	1. R. P. C. B. 329
<i>Scire facias</i> in debt, for an <i>administrator</i> ,	<i>Ibid.</i> 331
Entry of <i>scire facias</i> in debt by an <i>executor</i> ,	<i>Ibid.</i> 332
Entry of <i>scire facias</i> in case against an <i>administrator</i> ,	<i>Ibid.</i> 333
Entry of <i>scire facias</i> in debt against <i>executor</i> , and two <i>mhils</i> returned,	<i>Ibid.</i> 334
<i>Scire facias</i> where the plaintiff died after interlocutory judgment, and before final judgment,	<i>Ibid.</i> 336
Declaration on a <i>scire facias</i> upon a judgment recovered against defendant and his wife (since deceased), executrix, Declaration on a <i>scire facias</i> upon a judgment of assets <i>in futuro</i> , against executrix. Suggestion of assets since come to defendant's hands; defendant appears; sheriff returns <i>scire feci</i> ; defendant pleads no assets come to hand, and issue,	<i>Ibid.</i> 338
<i>Scire facias</i> for <i>executor</i> to revive a judgment obtained by their testator. Entry thereof on the roll,	<i>Ibid.</i> 355
<i>Scire facias</i> in case, where one of the plaintiff's married after judgment,	<i>Ibid.</i> 358
Entry of <i>scire facias</i> in debt by a surviving plaintiff,	2. R. P. C. B. 400
<i>Plca</i> of payment,	<i>Ibid.</i> 402
<i>Plca</i> by heir, confessing assets by descent, and judgment and execution thereof. <i>Davis v. PEPYS</i> ,	<i>Ibid.</i> 403
<i>Scire facias</i> by executrix of executrix of the recoveror, against the heir of the recoveree, on a judgment obtained against him, to be levied on certain lands, and also on the reversion of other lands held under demises for life and years when such reversion should come into possession. Sheriff's return thereto, that he had warned several tenants <i>proferri in curia</i> by plaintiff of letters testamentary, and prayer of execution; appearance by one of the defendants, and plea in abatement to the writ. Demurrer and joinder. Another defendant pleads in abatement to the writ, that the heir is not named. Demurrer and joinder as before, the heir pleads his own infancy, and prays that the parol may demur. Demurrer thereto and joinder. A third tenant pleads disclaimer. Judgment for plaintiff for his share. Enquiry of the value of the lands in his possession,	Lill. Ent. 393

INDEX TO LEADING TITLES OR HEADS

PRECEDENTS IN
BOOKS OF PRACTICE,
REPORTERS, &c.

Entry of *scire facias* in debt by executors of recoverer against the recoveree after judgment obtained in the C. B. for the testator. Award of execution for the executors, and removal of the record and proceedings from C. B. returnable in B. R. return *scire facit*. Plea, *null tiel record* of the award of execution for the plaintiffs. Replication, that there is such record,

Lill. Ent. 389. 391

Scire facias quare executionem non of judgment recovered in an action of assumpsit in C. B. removed into B. R. Plea in abatement thereto, that another *scire facias* was depending in the same court for the same cause. Replication, after two imparlances, that the plea on the first *scire facias* was discontinued. Rejoinder thereto, *null tiel record* of discontinuance. Surrejoinder, there is such record, and referring thereto by term and roll,

Ibid. 392, 393

Plea to *scire facias quare executionem non* of judgment in assumpsit of payment, according to 4. and 3. Ann. c. 16. s. 12.

Lill. Ent. 393

Judgment by default in *scire facias quare executionem non* in ejectment,

Ibid. 394

Scire facias executionem non; return thereto *nulla bona, alias scire facias* and return. Plea levied by *scire facias* after the judgment, and before the first *scire facias*. Replication, that sheriff did not execute *scire facias modo et forma*, and issue,

Ibid. 394

Demurrer to *scire facias quare executionem non*, after overprayed of the two writs, and returns that the writ is witnessed by Thomas instead of John Platt,

Ibid. 397

Judgment in *scire facias* for the plaintiff, that he have execution, &c.

Ibid. 398

Distingas in Middlesex, in *scire facias* by surviving executrix in debt in B. R.

Ibid. 567

Writ of *elegit* after *scire facias* on a judgment in debt in the late reign,

Ibid. 572

Elegit in debt for the residue (after part levied), by administrator *de bonis non* after a *scire facias* on a judgment recovered by the intestate,

Ibid. 572

Scire facias against the late sheriffs why they should not pay the money levied on a *testatum scire facias*, part levied and not paid,

Ibid. 642

Scire facias on judgment before the keepers of the liberty, &c. brought by the executor of surviving executor against the heir and terre tenants, and *scire facit* returned; terre-tenants plead that defendant never was seised, *1 Kez. Br. 228*.

By the king, on a judgment obtained in debt by an outlaw, *Br. 228*. On an assumpsit, *Ibid. 228*. On judgment in *quare impedit* by an outlaw, *Ibid. 249*. By the king's almoner, when plaintiff after judgment in ejectment, and before execution became *solo de se*, *Ibid. 273*. By the king on judgment in *quare impedit*, *Reg. Jud. 62*. By the king against the possessor of the archdeaconry, where the temporalities of the bishop are seised into the hands of the king by the judgment of the court, and the king grants the archdeaconry, *Ibid. 63*.

By

IN THE CIVIL DIVISION.

- By the king, on judgment in *quare impedit* against the bishop in the time of the late king and one who entered into the church, 1. *H. 5. 8.* On a judgment in assize of the last presentation, on account of the custody of an idiot, when the king on judgment presented J. who was admitted and resigned. Plea, that the judgment was unduly obtained by confession of defendant's attorney after the jury respited, *prout patet per recordum*, and judgment for defendant, *Moile, 129.*
- Scire facias* on a judgment in *quare impedit*, by survivor to have presentation, 2. *Br. 114. Br. 256.* For costs only, *Ibid. 269.* To have presentation, 2. *Br. 115. Moile, 135.*
- Scire facias* against bishop and clerk on a judgment in *quare impedit, nil dicit* by bishop. Plea by clerk, that plaintiff was outlawed, he resigned, and the king afterwards presented him by reason of the outlawry, and was admitted; and outlawry afterwards was reversed by writ of error, *Moile, 135.*
- Scire facias* on judgment by default in waste, 3. *Br. 377.* On the seisin, and damages in waste, 2. *Br. 123. Br. 278.* For damages only, *Vet. Int. 9.* Seisin only in place walled, *Br. 278.* By husband and wife, on judgment by assault in waste, obtained by wife, when sole, and another deceased, *Br. 280.* For damages in waste; sheriff returns defendant dead; *sci. fa.* awarded to administrator, *Ibid. 229.* Against A. and B. in waste; B. makes default, A. imparls, and then *non informatus, Ibid. 280.*
- Scire facias* to have seisin in dower, *Ra. Ent. 235. Reg. Jud. 12. 23. Finch, 91. Vet. Int. 11.* Of lands into which one entered after judgment rendered, *Ra. Ent. 236. Moile, 160.* For the rent, *Ra. Ent. 236. Vet. Int. 9.* By widow, on judgment in dower obtained by her and her late husband, against C. deceased, to have seisin against one who entered into the lands, and held them, being parcel of the manor, 2. *Br. 110. Br. 115.*
- Scire facias* by the now tenant in a writ of entry, who after judgment entered into the lands. Plea of *non tenet* after imparlance, plaintiff prays execution *pro periculo*, and hath it, *Ra. Ent. 279.* On judgment by default in *formedon.* Plea, that on the day of the original sued out he was not seised of the lands, and so the recovery void. Replication, that he on the same day was tenant thereof, *Ra. Ent. 367.*
- Plea to similar *sci. fa.* that on the day of suing out the original the tenant named in the writ was not tenant thereof, but one W. in a *que estate.* Replication, that the tenant in the writ on that day was tenant, *Ra. Ent. 367. Vet. Int. 11. 2. Br. 120.*
- Plea to similar *sci. fa.* that tenements are not contained in the recovery, *Ra. Ent. 590.* And plea that B. seised demised to defendant at will in abatement, *Ibid. 590. Vet. Int. 2.* Like plea by lessee for years, *Ra. Ent. 590.* Plea to like *sci. fa.* that demandant after judgment entered into the lands. Replication, did not enter, *Ibid. 590. Vet. Int. 75.*
- For damages in assize, removed into the common pleas, *Ra. Ent. 72. Vet. Int. 105.* To have seisin and damages in assize removed into B. R. *Ra. Ent. 72.* Award on judgment in assize to have execution of damages, *Ra. Ent. 79. Vet. Int. 102.* Of damages in assize of *fresh force*, and forty shillings, for want of plea of record in bar thereto pleaded, *Moile, 131.*
- For damages in a re disseisin, *Moile, 240. 237.* For damages in an assize of office, *Br. 2. 8.* By abbot, successor, for damages recovered in an assize of nuisance. By one defendant in assize against plaintiff at the assizes of a release of title to the lands made to him, and other matters concerning the writing, *Ra. Ent. 1101. Reg. Jud. 11. 22. 74. Vet. Int. 9.*
- By prior against succeeding vicar, on a judgment in *juris utrum*, and execution by default thereon, *Ra. Ent. 590. Vet. Int. 12.*
- By succeeding prior against sisters, co-heiresses, on a judgment to be quit of services in a writ of *mesne*, *Ra. Ent. 434. Vet. Int. 11. Reg. Jud. 66. 11.*

IN DOWER.

- By husband and wife, on a judgment obtained in dower by the wife, sole, of part of the value, and damages in dower, after remitter of part, 2. *Br.* 110. By widow, on a judgment obtained by her and her late *baron* in dower, to have seisin. Execution awarded by default, and thereupon the widow alleges that her former husband died seised of part of the lands demanded, and prays a writ as well to have seisin as to enquire of damages, and she hath it, and return thereto, 2. *Br.* 132. *Br.* 132.
- On judgment in dower against the ward of the land and heir, where the brother and heir after judgment entered into the land. Plea, that the heir at the time of the judgment was of full age, and that the judgment was void, for that the woman was not dowable. Replication, that she was dowable, *Ra. Ent.* 236. *Vet. Int.* 176.
- Scire facias* for the value and damages in dower against the heir of his father's lands. Appearance and *nil dict.* Enquiry of the value, and *liberate* thereon awarded, *Moile*, 123. On judgment in dower, and appearance thereto, *Br.* 125.
- By demandant in dower, who recovered seisin of a third part of the manor and tenements, where the sheriff, on a writ of seisin, delivered to him lands as parcel of manor and tenements, which were not parcel, &c. *Moile*, 123. To have restitution of the wardship of the heir vouched to warranty in dower, and who rendered dower where the sheriff delivered to the demandant more than he ought, and a writ to re-extend the lands after default on *sci. fa.* thereto, *Reg. Jud.* 40.
- By demandant against tenant in dower, on recovery against vouchee by default, whereupon judgment was reversed by writ of deceit, *T. 4. E.* 3. 27. *Reg. Jud.* 48. To have execution of judgment in dower, in which tenant vouched to warranty, the heir, who as heir, having nothing by descent gave dower, *Reg. Jud.* 53. To have lands to value of lands lost by default of defendant vouched to warranty in dower. Judgment by default, *Ra. Ent.* 241. *Vet. Int.* 114. To have a writ of enquiry of damages in dower, where tenant vouches to warranty *M.* who warranted and lost *per juramentum*, *Reg. Jud.* 49.

SCIRE FACIAS, &c. CONTINUED.

- Scire facias* to have seisin against two of several lands recovered, *Ra. Ent.* 590. *Br.* 250. By two, one of whom, after judgment, is made a judge, the other a knight, *Br.* 258.
- By one parcener after the death of the other, whose heir he is, to have seisin of lands recovered by them against one who entered into the lands, *Ra. Ent.* 352. *Vet. Int.* 11. *Reg. Jud.* 12. 50.
- Scire facias* to have seisin on a judgment in a writ of entry against one who entered into the lands, and the entry thereon, *Ra. Ent.* 279. 236. 2. *Br.* 111. *Br.* 250. 252. In *formedon*, *Ra. Ent.* 367. 2. *Br.* 120. For rent, *Ra. Ent.* 236. By the heir, on judgment in a *formedon* against two of several lands into which one entered after judgment, and entry thereon, *Ra. Ent.* 327. *Vet. Int.* 11. *Br.* 248.
- Scire facias* on judgment in *debt and detinue*, *Moile*, 114. For the value and damages in detinue, 2. *Br.* 115. *Br.* 240. 256. Against a garnishee for detaining a dead, *Br.* 255. In detinue, to interplead of a deed delivered to defendant by plaintiff and another jointly on certain conditions, *Ra.* 216. 220. *Reg. Jud.* 61. *Vet. Int.* 28. 2. *Br.* 117. By successor, where late prior died before the return of the *sci. fa.*, *Ra.* 217. *Vet. Int.* 95.
- Scire facias* on judgment in a *right of ward*, *Moile*, 114. On interpleader awarded in another cause against the same defendant, *Reg. Jud.* 59.
- By two co-heiresses within age on a judgment in *partition* obtained by the father, *Moile*, 132.
- On judgment in ejectment, *Br.* 228.
- Scire facias* to have restitution of lands recovered by writ of *right close*, and judgment was reversed by writ of *false judgment*, *Vet. Int.* 136. To have restitution on

on a judgment in *trespass* in the manor court, and judgment reversed by writ of false judgment, 2. *Br.* 111. *Br.* 251. 186. 256. *Mule*, 97. To have execution on a judgment on *writ of right close* in the manor court, affirmed on writ of false judgment, *Br.* 266. On judgment in *trespass* in the hundred court affirmed on writ of false judgment, *Br.* 268. On judgment in county court by justices removed into C. B. by writ of false judgment, and plaintiff *non prof.* *Br.* 234.

Scire facias to have execution of lands in value on a judgment by default of vouchee in *formeden*, *Ra. Ent.* 368. *Br.* 231. 274. *Moile*, 130. By husband and wife tenants (where wife was admitted to defend the right), against vouchee, to have lands in value. *Reg. Jud.* 59. By the heir of the tenant in a *writ of entry* against the heir of C. vouched to warranty, who vouched over to warranty M. who lost the lands by making default, *Br.* 231.

Scire facias, defendant committed to Fleet on judgment. Plea, acquittance for his discharge, *Br.* 247. By woman waived after judgment, who rendered herself to the Fleet and is pardoned, and plaintiff's executor releases, *Ibid.* 258. *Ra.* 459. By prisoner, for damages in assize, whereof plaintiff made an acquittance, 73. 2. *Br.* 116. On judgment in *banco*, *Ra.* 166. *Vet. Int.* 10. *Reg. Jud.* 41. 43. *Br.* 268. By prisoner in Fleet, on judgment in inferior court, *Ra.* 98. On a release made to husband and wife, executrix outlawed and waived after judgment, and detained in the Fleet, where the king pardoned the outlawry and waif, *Ra.* 167. On release by executor to judgment obtained by testator in debt, whereon defendant is outlawed, *Ibid.* 167. *Reg. Jud.* 42. *Vet. Int.* 10. 2. *Br.* 117. Where pardon, *Ra.* 167. Where defendant rendered on *exigi facias* after judgment, and brought into court by sheriff, and committed to plaintiff, and immediately pleads release, *Ibid.* Bail thereto, and *fiire facias* awarded, *Ibid.*

Tessatum scire facias on release made to defendant in trespass by a prisoner in the Fleet, 63. After outlawry, 639. Defendant brought into court by the warden of the Fleet, pleads release. *Scire facias* awarded, and bail for defendant, 97. *Vet. Int.* 140. Outlawed on *capias* for fine and committed, pleads pardon and release. *Scire facias* awarded, and bail for defendant, *Ra.* 458. *Tessatum scire facias* to consents deed, sheriffs' return *mandavi ballivo*. Judgment for defendant, *Ra.* 586.

Defendant taken on statute merchant, pleads release. *Scire facias* to plaintiff and defendant dismissed on bail. *Scire feci*. Impar lance. Demurrer and default at the day by defendant. Judgment, that plaintiff have execution, *Ra.* 597.

On judgment in trespass, defendant renders himself to the Fleet, and pleads release made by administrator. *Scire facias* awarded, *scire feci* returned, and judgment by default, *Ra.* 639. *Vet. Int.* 87. Where sheriff returns plaintiff dead, and *alias scire facias* to executor, *Ra.* 639. Sheriff on *capias* in trespass returns *mandavi ballivo*, returns that defendant was committed by auditors for arrears of an account, and *corpus paratum*, &c. committed to Fleet, afterwards brought into court, says he did not account before auditors, and prays to be discharged. *Scire facias* awarded, *Ra.* 18. *Scire facias* by pauper, a prisoner, on a late act of parliament in that behalf, 2. *Br.* 84.

For arrears of annuity incurred after judgment, *Ra.* 38. *Reg. Jud.* 61. *Vet. Int.* 11. *Her.* 599. *Ra.* 193. *Vet. Int.* 15. For an annuity recovered, and arrears after judgment, *Ra.* 38. *Reg. Jud.* 32. 65. *Vet. Int.* 9. By succeeding abbot against rector, *Ra.* 193. *Vet. Int.* 65. On judgment against defendant, rector, and patron, who joined defendant in aid, *Ra.* 39. Against patron and ordinary, whom defendant had in aid, *Ibid.* *Reg. Jud.* 21. 41. *Vet.* 9. Succeeding prior against succeeding rector, *Reg. Jud.* 41. p. 8. *E.* 3. 24. 29. *E.* 3. 34. By prior against vicar, *Br.* 246. By succeeding prior against succeeding rector, *Br.* 246. 252. By abbot against succeeding parson, and aid prayed of bishop and patron, *Br.* 245. 247. 268.

INDEX TO LEADING TITLES OR HEADS

- Scire facias* by prior against prior for arrears of rent granted by fine, 21. *E. 4.* 60.
Tibatum scire facias in annuity. *Scire facias* on a judgment in annuity, and judgment on prior *scire facias* for arrears, *Reg. Jud.* 11. Plea, *riens* in arrear, *Ra.* 38.
Scire facias against rector of a church, to recover arrears of an annuity. Plea, that he resigned the rectory. Replication, did not resign, *Ra.* 193. *Vet. Int.* 65.
Scire facias on judgment in debt, *Ra.* 164. 327. *Reg. Jud.* 12. 62. *Br.* 242. Where plaintiff remits part, 228. Part of debt recovered, and damages, 238. 255. As to part of debt against husband and wife, on judgment against wife, *Asb.* 423.

BY AND AGAINST EXECUTORS, &c.

- Scire facias* against executor on judgment in debt obtained against testator. *Scire facias*, imparlance, and plea, *Co. Ent.* 618. *Moile*, 102. Against administrator on judgment against intestate, *Co. Ent.* 617. *Br.* 244. By executor against husband and wife executrix on judgment in debt against wife, executrix, and former husband, *Br.* 243. *Asb.* 242. By two executors surviving against executor on judgment in debt, 3. *Br.* 358. By administrator against executor on judgment in debt, *Moile*, 102. By executor and husband and wife, co-executrix, against executrix, on judgment obtained by two executors whilst wife was sole, against executor, *Her.* 495. By husband and wife, executrix on a judgment obtained by administrator *durante minori a tate* of executor, against husband and wife administratrix, *Moile*, 118. By executor for debt on judgment obtained by testator against executor, *Ra.* 329. By administrator on judgment of detinue of a writing, *Br.* 252. Against executor, to have delivery of two deeds recovered by plaintiff against testator and garnishee, *Ra.* 215.

ERROR PROCEEDINGS, AND IN EJECMENT.

- Scire facias* on judgment in trespass, *Br.* 242. 255. For part of damage, *Reg. Jud.* 75. In case, *Br.* 242. For part of damages, 237. For costs on *non pro.* in debt, *Br.* 242. 254. In account, 252. On judgment on an information against an ingrosser, 1. *Br.* 137.
Scire facias by abbot on judgment against predecessor, and execution by default awarded thereon, *Ra.* 165.
Scire facias for a deed on *non est factum* pleaded in court, to take it out of court, for that the plea is discontinued by the king's demise, *Reg. Jud.* 82.
Scire facias in debt, *Off. Br.* 315. Where plaintiff is nonsuit, *Mo. Intr.* 233. 263. For debt and damages after a year and a day, *Bro. Vad.* 597. 1. *Inst. Cl.* 144. 314. 315.
Scire facias awarded in replevin, *Mo. Int.* 326.
Scire facias on a judgment for damages in trespass, return thereof, Plea, that parcel of the damages were taken in execution on a *feri facias*, and that it was agreed that if T. A. and T. M. would undertake to pay to the sheriff ten pounds, that the plaintiff would accept the same in *satisfaction*, and that it was paid at the day. *Demurrer*, *Lev. Ent.* 164.
Scire facias on a debt recovered in C. B. 1659, in the time of the Usurpation, where the plaintiff, since his majesty's restoration, is made a baronet, *Mo. Int.* 364.
Plea, that money has been levied by *feri facias*, *Clif.* 675.
Scire facias in ejectment, where one defendant is dead since the recovery, *Pl. Gen.* 198.
Entry of *scire facias*, and return in ejectment, *Clif.* 675. In ejectment against those who entered since the recovery, *Ibid.* 676. Against persons entering into judgments after defendant's death, 677. Execution by default, 682.

Decla-

Declaration and entry on *scire facias* returned by sheriff, and default thereon, *Cl. Ass.* 472.

Scire facias against sheriff for returning a rescue of goods taken (on *scire facias*), and that defendant had no other goods. Demurrer, and judgment for plaintiff, 2. *Sax.* 338.

Scire facias against sheriff, who took more money of the vill for the expences of a knight to serve in parliament than was assessed, *Off. Br.* 336. Entry of *scire facias* against late sheriff, for non-payment of debt and damages after *scire facias* returned, 1. *Bro.* 319.

Entry of *scire facias* against sheriff, for not bringing the goods he levied upon a *scire facias*, *Mo. Int.* 367.

Scire facias against an attorney upon a recovery in debt, *Bro. Vad.* 581.

Scire facias in *assumpsit*, 1. *Inst. Cl.* 151. In ejectment, *Bro. Vad.* 583. Trespass on the case, 1. *Inst. Cl.* 151.

Entry of two *scire facias* with two *nibils* returned, and judgment by default, 1. *Inst. Cl.* 146.

Scire facias for damages in assize, *Off. Br.* 325. 338. 342. In assize for an office, *Ibid.* 328. In *quare impedit* after the death of one of plaintiffs, *Ibid.* 326. In assize of *fresh force*, *Ibid.* 344. For damages recovered on redistinction, *Ibid.* 328.

Entry of *scire facias* for damages recovered in assize against husband and wife, and another who took a wife after marriage had between the husband and wife, and after the death of the second husband, *Ibid.* 334.

Entry of leave to get a better writ of *scire facias* on fine, and *scire facias* awarded to coroner, because sheriff is akin, and coroner amerced, for that he alone ought to return the writ, *Off. Br.* 334.

Scire facias on letters of pardon by husband and wife against plaintiff, who had prosecuted his suit in debt, *Pl. Gen.* 194. *Off. Br.* 312. On letters of pardon by outlaway in case brought by administrator for goods testator sold, which came to defendant's hands by finding, *Pl. Gen.* 195. *Off. Br.* 312. On letters of pardon of outlaway in a plea of covenant, *Pl. Gen.* 178. 196. *Off. Br.* 313. On pardon by parliament of outlaway, *Bro. Met.* 347.

Judgment by default against the late sheriff in a *scire facias*, where the sheriff on a *scire facias* returned levy of money which he had to deliver, but did not, *Off. Br.* 261.

Scire facias for damages on a recovery in *detinue* of a statute staple of Westminster, 1. *Bro.* 323.

Scire facias on a recovery in dower in C. B. *Han.* 244. *Off. Br.* 262. In *formedon*, 1. *Bro.* 328. On a recovery in an inferior court, *Han.* 234.

Scire facias de habendo cattle of the value in *withernam*, and damages in *replevin* by the surviving avowant, *Off. Br.* 266. 2. *Bro.* 108. Judgment by default on a *scire facias* against plaintiff for damages in *replevin*, *Off. Br.* 266. *Scire facias* after *non prof.* in *replevin* since the death of one of the avowants, 1. *Bro.* 326. *Scire facias de retorno habendo*, *Off. Br.* 332.

Scire facias in *waste* by the heir, *Off. Br.* 275. In *waste*, whereof *habere facias finem* is awarded, 267.

Scire facias on levying a fine, with render by the heir in remainder of lands, parcel of the manor, and bailiffs return *scire feci*, *Off. Br.* 267. 1. *Bro.* 328.

Scire facias in *quare impedit*, *Bro. Vad.* 583. For damages, *Bro. Met.* 344. *Off. Br.* 275. *Quare impedit* appearance of patron and incumbent, &c. Plea, outlaway in the plaintiff pending the *quare impedit*, 1. *Bro.* 324. For the plaintiff to present, *Bro. Met.* 343.

Scire facias in *account*, that defendant may account with the plaintiff, 343. In *partition*, 1. *Bro.* 328. On a writ of false judgment, *Bro. Met.* 362. After judgment affirmed, 370.

Judgment by default in ejectment on scire facias and habere facias possessionem awarded, Off. Br. 271. Scire facias for damages on judgment in ejectment, Ibid. Against surviving defendant, Ibid. 291.
Entry of scire facias after fieri facias and inquiry, Cl. f. 659. Entry of scire facias, enquiry, and execution by default, Ibid. 660.
Scire facias to execute a fine, sheriff's return mandavi ballivum, appearance, and plaintiff prays execution, Ra. 587. Plaintiff, after entry of scire facias, alleges descent to himself, and prays execution, Ibid. 588. Sheriff's return scire feci, appearance, and confesses execution of the fine, Ibid. Return of scire feci, default made by defendant cur. adv. vult. of the judgment, Co. Ent. 632.

PARDON AND OUTLAWRY.

Scire facias to plaintiff on special pardon of outlawry, Reg. Jud. §. 11. 28. 57. Vet. Int. 10. Br. 248. 251. On general pardon, 2. Br. 85. Reciting plea on an act of parliament, Ibid. Br. 248. 276. Alias testatum scire facias, when defendant outlawed in debt rendered, and pleads pardon, Ra. 458. By husband and wife outlawed and waived, Ibid. On plea by defendant of misnomer to reverse outlawry, 298. Vet. Int. 221. Of misprision of commorancy, Ra. 299. Tbrs. 117. Br. 272.
Scire facias against defendant in debt, who after judgment made a feoffment of lands by fraud, and he took the profits thereof in sanctuary, where he fled, Moile, 130.

SCIRE FACIAS, &c. CONTINUED,

Scire facias to have return of cattle in replevin, Ra. 571. Asb. 422. 432. Vet. Int. 37. 2. Br. 119. Against executor, to have cattle of testator of the value in withernam, and damages in replevin, 2. Br. 108. 3. Br. 356. To have return of cattle irrepleviable, and damages in replevin, Br. 240. 2. Br. 118.
Entry of scire facias against prisoner in the Fleet in debt, who being brought to the bar by habeas corpus after nihil and non est inventus returned, confesses judgment by nil dicit, and is committed until, &c. Off. Br. 269.
Entry, scire facias in dower, return mandavi ballivum, answer scire feci, defendant makes default, and plaintiff prays seisin and execution, Off. Br. 273.
Scire facias in annuity, Off. Br. 319. Judgment by default on scire facias for arrears of an annuity accruing since judgment, and sheriff's return, scire feci, Off. Br. 275.
Scire facias on a recovery of annuity for arrears and damages before judgment, and for arrears after judgment, Pl. Gen. 198, 199.
Scire facias for annuity of prior of N. 1. Bro. 322. For the arrears of an annuity as well before as after judgment, and where defendant after judgment was knighted, Bro. Mus. 361.
Scire facias against a surviving defendant, Off. Br. 291. In ejectment, Ibid.
Scire facias by plaintiff against a stranger to the judgment, who purchased messuage of the debtor after judgment rendered, and before inquisition, 296.
Scire facias in audita querela by an infant to make void a recognizance made in the court of chancery, Off. Br. 297.
On audita querela by a prisoner in the Fleet and discharged, 1. Bro. 327. To shew cause why one R. C. should not be discharged out of prison, Han. 236. In audita querela, where release produced, Han. 243. Cl. Man. 48.
By widow, on a judgment obtained by her and her late husband in dower, seisin awarded by default, and thereupon the widow says that her former husband died seised of the manor and six acres of meadow, and prays a writ of seisin as well as enquiry of damages, and hath it, and return thereto, Off. Br. 298. 2. Bro. 132.

Like

Like of four messuages, and the profits of the office of keeper of the king's palace, &c.; sheriffs return to have seisin of the tenements, and of the third part of the profits of an office for the payment of a sum of money, parcel of the profits, *Off. Br.* 299.

Plea to *scire facias* to have execution in dower, tenant pleads grant of an annuity after judgment in satisfaction of dower, and the *feme's* agreement to the grant. Replication, protesting did not grant; for plea, did not agree, and issue, *Off. Br.* 299.

Against husband and wife upon a recovery against the wife when sole, *Bro. Met.* 364. *Off. Br.* 281.

Scire facias against an infant in a writ of entry in *le quibus*, who appears by guardian, and impairs; age denied, *Off. Br.* 300. On a recovery on a writ of entry in *le post*, *Off. Br.* 317. For seisin of tenements and damages in writ of entry in the *quibus*, 344. Judgment by default, and afterwards defendant is taken by virtue of an outlawry for the debt and damages, and committed to the Fleet, 300.

Plea to *scire facias*, that debtor was seised at the time of the judgment, but that afterwards he became bound to the queen, and that the land was extended; with averment, that land mentioned in *scire facias* was parcel of the lands and tenements specified in the inquisition, *Off. Br.* 301. *Scire facias* to have execution of seisin of tenements in the fine, *Off. Br.* 302.

Scire facias in *warrantia chartae* of execution of a fine, with remainder in tail, remainder to M. in fee by the next of kin and heir of M. in a plea of *warrantia chartae*, *Off. Br.* 301. In *detinuit*, 308. *Scire facias* where defendant pleads *misfeasance* in discharge of outlawry, *Ibid.* *Scire facias* on traverse of the outlawry, where defendant, on a *capias allegatum*, appears, and pleads exception to the vill, *Ibid.* *Scire facias* by plaintiff on plea by defendant, that he was never commorant at the place in the writ. Replication, that he was commorant at the place in the writ, and issue thereon to be tried in the county palatine of Chelster, and verdict for defendant, *Off. Br.* 309.

By the rector of the church against the succeeding vicar, for arrears of an annuity recovered, *Off. Br.* 310. Against a successor on recovery in a writ of annuity, *Pl. Gen.* 183.

For an annuity and damages recovered, and arrears after judgment, *Off. Br.* 310. For seisin and damages in *assize* after recovery before justices at the assizes, and afterwards sent into the bench by writ, *Off. Br.* 313. *Pl. Gen.* 197. 183.

Scire facias to have restitution in *false judgment*, *Off. Br.* 317. *Pl. Gen.* 191. For damages in *trespass*, and satisfaction acknowledged by plaintiff by attorney, summons for damages thereon, *Off. Br.* 318. Continuance of *scire facias*, *Ibid.*

Scire facias to have execution on a judgment in entry in *le post* of three manors, in one of which some entered, and one is made a knight, and others are since dead, *Off. Br.* 319. Where after judgment defendant is created an earl, *Ibid.* 283. 322. 1. *Bro.* 321. 326. *Bro. Met.* 363.

Scire facias in dower of a manor, in which the brother and heir entered after judgment, *Off. Br.* 322. In dower by husband and wife, on a judgment rendered by wife whilst sole, *Pl. Gen.* 189. In dower after death of husband of demandant, and death of tenant, *Off. Br.* 324.

Scire facias in *replevin* for value of the chattels, *Ibid.* 326.

Scire facias to have restitution on a judgment in detention of goods in the hundred court. Judgment reversed in C. B. removed by *re-fa. lo.* *Ibid.* 327. *Scire facias* against pledges to gage deliverance of cattle, *Ibid.* 327. For damages only for the *distaining*, *Ibid.* 319. For damages recovered in an *assize* of nuisance, *Ibid.* 320. For damages recovered on *non prof.* in *debt*, *Ibid.* 321. In *trespass*, *Ibid.* For parcel of damages in case, *Ibid.* 324.

Scire facias on judgment in *detinuit* against J. and H. Sheriff return *scire feci.* J. who appears

appears, *testatum* awarded to H. who appears and impails, *disi datus* to J. *Off. Br.* 328.

Scire facias against bailee on garnishment in detinue, *Off. Br.* 330. Of a deed, where defendant says writing was delivered on certain conditions, but whether performed or not is ignorant, *Ibid.* 276. For debt and damages, and for the delivery of chattels, or their value, *Ibid.*

Scire facias to have execution and seisin on a judgment against two of several lands, *Off. Br.* 329. *Scire facias* for arrears of annual rent after mittimus in the time of the late king, *Off. Br.* 331. After mittimus by the now king, *Ibid.* *Non omittas scire facias*, and entry thereof, *Ibid.* 330. In waste, *Bro. Alet.* 358. Judgment by the heir in waste by default on *scire facias* as to places wasted, *Ibid.* 333.

Scire facias for debt and damages recovered in the county by writ of justices after *non prof.* in a writ of false judgment, *Off. Br.* 337. After cattle eloiigned *retorno habendo* against pledges, *Ibid.*

Scire facias for the king in *quare impedit* against chaplain, who entered after judgment, *Off. Br.* 338.

Scire facias where defendant renders for debt and damages, and pleads release, *Off. Br.* 339. Renders and pleads satisfaction and acquittance, and *scire facias* awarded to plaintiff to confess or deny the deed, *Ibid.*

Plea, *nullius record.* Estoppel by record in court, *Off. Br.* 341.

Scire facias on recovery in inferior court, in writ of right in nature of an assize at common law, where the record was removed and affirmed, *Off. Br.* 341.

Plea to *scire facias* to execute a fine, that the manor is not contained in the fine, *Ibid.* 347.

For damages in assize against husband and wife and others, where a divorce was had between the man and his wife, who married another wife, and the other defendant died, *Bro. Met.* 353. On recovery in assize of last presentation, 355. *Scire facias* after assize of last presentation by the king, in right of ward of an idiot, and his lands, the wives of defendants appear, and pray to be received, *Ibid.* 335.

Scire facias in ejectment, after parcel of the damages remitted on *mibi* returned, appearance, and plea, that he had a gift of a lease for years in satisfaction of damages, and plaintiff accepted in satisfaction, *Thes. Br.* 250.

Plea to *scire facias* of variance between the foot of the fine and transcript of the foot of the fine, *Off. Br.* 346.

Entry of writ of *scire facias* after *capias ut legatum*, to which defendant pleads that he was never commorant at the place named in the writ. Replication, that defendant was commorant at the place, &c. and issue into county palatine of Chester, and verdict that defendant was commorant at M. and not in place, &c. *Off. Br.* 310.

Scire facias, where after judgment a barony descended to plaintiff, *Br.* 204. Where plaintiff is make a knight, *Ibid.* 238. 240. 252. 258. 2. *Br.* 116. 123. A baronet, 2. *Br.* 248. Judge, *Br.* 240. 258. Knight and judge, 235. Where defendant is made a knight, *Br.* 230. An earl, 240. 256. *Thes.* 110. Bishop created archbishop, 2. *Br.* 116.

Against sheriff, for taking insufficient pledges for return of cattle, *Moile*, 131. 147. 158. Judgment for defendant, *Jud.* 126. Judgment against sheriff on demurrer, 129. Against sheriff, who levied money on a *scire facias* and *renditioni ex pias*, and did not pay over to plaintiff, *Br.* 235. 2. *Br.* 124. On *scire feci* returned, *Moile*, 48. 98. Against the sheriff, who levied more than the assessment upon the inhabitants of the town for the expences of a knight to serve in parliament, *Br.* 234. 241. 2. *Br.* 121. *Moile*, 126.

Against coroner, for a fine in neglecting to attend the county court to render judgment on an *exigi facias*, *Ra. Ent.* 586. *Vis. Int.* 113. Writ awarded, *Ra. Ent.* 586.

- Scire facias* to the wife of tenant in a writ of right, to hold jointly with the husband, *Ra. Ent.* 107. 233. *Vet. Int.* 9. *Reg. Jud.* 12. 56. In assize, *Reg. Jud.* 59. In a plea of land to hold jointenances pleaded, *Ibid.* 47. In assize, *Ra. Ent.* 164. *Reg. Jud.* 11. 56. *Vet. Int.* 11. 143. *Scire facias* to execute a fine, *Vet. Int.* 9.
- Scire facias* to have delivery of lands extended by *elegit* in debt, *Ra. Ent.* 164. *Vet. Int.* 11. *Reg. Jud.* 35. *Br.* 237. 269. On statute merchant, *Reg. Jud.* 42. Of lands extended by *elegit*, where plaintiff levied part of the money, and defendant is prepared to pay the residue, and brings money into court, which plaintiff received, *Ra. Ent.* 236. *Reg. Jud.* 73. *Moile*, 101. *Vet. Int.* 138.
- Against tenants by statute merchant on allegation that money is levied, *Moile*, 144. *Br.* 281. By feoffee, where part of money is levied, and residue brought into court, *Moile*, 145.
- On *elegit*, sheriff returns inquisition, and that he could not make delivery. for that the lands were before delivered to H. in extent. Plaintiff alleges that H. is afterwards satisfied, and *scire facias* thereon, and after special imparlance *nil dicit*, *Moile*, 41.
- By W. against tenant by *elegit* executed by the late sheriff on *non omittas*, where sheriff delivered to plaintiff a capital messuage bought by said defendant since the judgment as a moiety of four messuages, when the said capital house and four houses are the same, and said W. ought to hold the moiety discharged of the execution, 2. *Br.* 125. *Br.* 262.
- By W. against tenant of lands extended on a statute merchant, where the same lands were afterwards extended by another statute at the suit of the said W. but not delivered to him, because they were before extended to have delivery made, now alleging that the debt is now levied, *Reg. Jud.* 71.
- Scire facias* to a *præee in aid* in *scire facias* to execute a fine, *Reg. Jud.* 36. 50. And where one plaintiff was severed, and the other admitted to sue alone for a moiety, *Ibid.* 12. And to two *præees in aid* severally of several lands, parcel of the manor, *Ibid.* 73. To have execution of a fine, with render, 29. *E.* 3. 2. By cognizor, for part of lands after the death of tenant for life, *Reg. Jud.* 10.
- Scire facias* against tennor, suggestion of a surrender, *Moile*, 132. In reverter, where donees died without issue, *Her.* 598. *Ra. Ent.* 585. *Dyer*, 69. 199. On a fine, with render to T. in tail, remainder to plaintiff in fee, and T. died without issue, *Vet. Int.* 113. *Co. Ent.* 624. 629. 632. On fine, with render in tail, remainder to A. in tail, remainder to plaintiff in fee, *Co. Ent.* 632. With divers remainders in tail, and death without issue, *Her.* 596. *Ash.* 428. *Br.* 226.
- By three cousins and co-heiresses in remainder, *Ra. Ent.* 580.
- By the heir in remainder of lands, parcel of the manor, 587. *Vet. Int.* 10. *Br.* 228. *Reg. Jud.* 6.
- By husband and their wives to execute a fine levied, with render in tail to some cognizee, who died without issue, remainder to the femes plaintiffs, *Dyer*, 69. On a fine levied in the court of the abbey, and sent into the bench by *certiorari*, 44. *E.* 3. 23.
- Entry of the *missimus de tempore* of the foot of an ancient fine, and transcript thereof, and *scire facias* awarded to have execution, *Ra. Ent.* 580. *Vet. Int.* 10. Three writs of *scire facias* awarded into several counties to one tenant to execute a fine, *Vet. Int.* 10.

PLEAS, &c. CONTINUED,

- Plea of misfeasance in discharge of outlawry, *Ibid.* 308.
- Plea, execution to the villon *capias utlagatum*, *Ibid.* 308.
- Plea, that plaintiff was born out of marriage. Replication, born in marriage, 341.
- Scire facias* by king's patentee, for goods of a *felâ de se* on a judgment obtained by him, appearance, *nil* returned. Plea, the act of oblivion, 12. *Car.* 2. *7th. Ent.* 278.

- Plea (*nisi*) returned against two) to *scire facias* against M. that defendant died before the return of the *capias ad satisfaciendum*. Replication, that he is living, and traverses the death, and issue on the traverse, *Ibid.* 280.
- Plea, no *capias ad satisfaciendum* sued out against defendant, *Mo. Ent.* 281.
- Plea, that defendant was arrested on *capias ad satisfaciendum*, and detained until debt was satisfied. Replication, *nul tiel record*. Rejoinder, *habetur, &c.* *Tbo. Ent.* 282.
- Plea to *scire facias* against M. that no *capias ad satisfaciendum* was sued out, returned, *filed*, *Tbo. Ent.* 282.
- Plea to *scire facias* that the transcript of the record of the judgment is removed into the exchequer by writ of error not yet determined, *Mo. Ent.* 282.
- Plea to *scire facias*, that defendant was arrested on a *capias satisfaciendum*, and permitted to go at large. Replication, confessing but that defendant was a servant of a peer, and produced his protection, and so was permitted, *&c.* *Tbo. Ent.* 283.
- Plea to *scire facias* for possession and damage in ejectment, that the *habere facias possessionem*, when the *scire facias* issued out of the common pleas, was executed. Rejoinder, writ remains with the *custos breviarum*, *Tbo. Ent.* 286.
- Appearance by plaintiff and defendant to *alias scire facias*, and defendant pleads that a *seri facias* was sued out in a certain term returnable on a day certain of the next term. Replication, *non seri fecit*, *Tbo. Ent.* 288.
- Plea, *nul tiel record* to *scire facias* since the year and day. Replication, *habetur tale recordum*, and judgment thereon for plaintiff, *Tbo.* 290.
- Plea in bar to *scire facias* to execute a fine, that plaintiff is a bastard, and writ awarded to the bishop, *Ra. Ent.* 588.
- That where plaintiff by writ alleged he was son, he was born out of wedlock, and issue, *Ra. Ent.* 588. *Vit. Int.* 174. 176.
- Plea, defendant makes title to A. and M. by feoffment in a *que estate*. Replication, that J. of L. and J. of T. are the same person, and traverses that the marriage was celebrated between J. and M. before the marriage between H. and M. *Ra. Ent.* 588. *Vit. Int.* 174.
- That J. seised, devised lands to J. his wife for life, who took to husband M. who levied a fine. Reversion descended to K. who since the death of J. enfeoffed defendant. Replication, that said T. and M. were seised in fee; T. devised and died; J. took to husband M. who levied a fine, and traverses that J. was seised, *modo et forma*, *Co. Ent.* 633. Confession to part, to residue, plea, common recovery before fine, and devise of lands to uses in tail, and W. in remainder in tail levied a fine, and defendant was seised in tail by devise. Replication, another devise of lands, confesses recovery; and traverse devise alleged by defendant, issue, and judgment for plaintiff, *Co. Ent.* 626.
- Plea to *scire facias* against husband and wife, who plead to issue. Husband makes default at the day, and wife is received to defend the right. Pleads that she is tenant in tail after possibility of extinct, and prays in aid of the reverser, *Ra. Ent.* 585. 589.
- Plea, an estate for life in defendant, and prays in aid of two *parceners in reversion*, who join on summons, defendant, after impannelance, makes default, and the partners are admitted to defend the right, *Co. Ent.* 632. *Rep. Jud.* 12. Prays in aid of the king, *Moth.* 129.
- Plea to part, bastardy specially pleaded. Demurrer, and judgment for plaintiff to residue, non-tenure, *Mo. le.* 127. Non-tenure, *Br.* 266.
- Plea that R. and J. married and had issue J. &c. *que estate*. Replication, that long before, &c. R. took another woman to wife, and traverses that R. and J. had a son, *S. Ver. Int.* 175.
- That R. and wife had issue E. the eldest, and for S. and W. the youngest, to whom plaintiff

plaintiff made himself akin by the writ. R. and J. died, E. had issue, &c. J. entered after the death as of his remainder, *que estate*. Replication, that R. and wife had issue said E. the elder then W. and S. the youngest, and traverses that S. was elder than W. *Ra. Ent. 588.*

That J. was seised in tail by virtue of a fine, and fine executed, *que estate*. Replication, not seised, *Ra. Ent. 558. Vet. Int. 75.* Like plea to one one moiety, to the other *partes finis nihil habuerunt*, but one C. was seised, from whom it descended to defendant. *Her. 598. Alb. 424.* By two defendants severally, that tenements against them demanded; *partes finis nihil habuerunt* in the tenements at the time of the levying of the fine, that W. was seised, *que estate*. Replication, that cognizor was seised at the time, *Ra. 589. Vet. Int. 171.* As to lands, that *partes, &c.* and as to rent, he is not tenant or deforcer, plaintiff prays execution *suo periculo*; and to lands, says, parties were seised in fee, *Ra. 589. Vet. Int. 171.*

Plea, that *partes, &c.* but that E. and others were seised in fee, *que estate, Co. Ent. 632. Dy. 215.*

Plea to *scire facias* in debt, *release*. Replication, duresis, *Ra. 250. Alb. 241.* and *non est factum* thereon, *Ra. 590.* Plea to *scire facias*, null trial record, 3. *Br. 363.* After imparlance, 2. *Br. 142.* That plaintiff levied debt and damages by *scire facias*. Replication, and issue, *Ra. 327. Vet. Int. 200.*

Plea, that plaintiff brought another writ of *scire facias*, and had execution by default. Replication, that it was brought beyond the year. Judgment, that plaintiff have execution, *Ra. 164. Vet. Int. 75.*

SCIRE FACIAS AGAINST EXECUTORS TO REVIVE, &c. AND ON JUDGMENT.

VOL.

IX.

Page

556 *Scire facias* against executor in an action as against testator, who died after interlocutory judgment, and after the return of the writ of enquiry to shew cause, &c.

559 Plea, payment of the damages in discharge of the action before the issuing of the first *scire facias*. Replication. Postea. Verdict for plaintiff. Judgment.

560 *Scire facias* against administrator with the will annexed after the death of one executor named, who did obtain probate, and after the renunciation of the other to revive judgment against the original defendant.

561 *Scire facias* in B. R. against an executrix to revive a judgment in debt obtained against the testator.

562 *Scire facias* in G. B. by executors of executrix, to revive a judgment recovered by testator in his lifetime, and which had been once revived by executrix against original defendant.

563 Declaration on *scire facias* against executors. 559

564 *Scire facias* to revive judgment against administrator of defendant, who died after judgment signed and enquiry awarded, and before writ of enquiry executed. Writ of enquiry on the last *scire facias*.

565 Declaration against executors in C. B. 571

566 *Scire facias* by executor against executor on judgment.

567 *Scire facias* by executors on judgment recovered against

568 administrator. Plea. Replication.

- Scire facias* against administrator on judgment in debt against intestate; imparlance. Plea, that *capias ad satisfaciendum* was sued out by plaintiff against intestate, who was in execution thereon, and died. Demurrer, and judgment for defendant in B. R. but reversed in the exchequer, *Off. Br.* 245.
- Scire facias* by executor against executor, *Bro. Met.* 341.
- Against administrator on judgment in debt by testator against intestate, *Off. Br.* 253. 321. Plea, *plene administravit*. Replication, that administrator, on the day of suing out writ of *scire facias*, had goods to the value, &c. and issue, *Ibid.* 253. And special verdict. Jury say that the intestate procured an assignment of the lease in reversion in trust to his use, by which defendant, after the death of intestate, by an order in chancery, paid him one thousand pounds, and if the money paid by defendant was intestate's goods, then he had assets, &c. *Ibid.* 254.
- Against executors on a judgment against testator, who appear. Imparlance and plea, that sheriff of London, by virtue of a *capias ad satisfaciendum* against plaintiff, took testator, who before the return in execution died in custody. Replication, that sheriff did not take testator by virtue of a writ of *capias ad satisfaciendum*, *preut*, &c. And on special verdict judgment for plaintiff, *Off. Br.* 256.
- Scire facias* by surviving executor, *Off. Br.* 343. By an executor after a year and a day, *Bro. Vad.* 582. 1 *Inst. Cl.* 320. *Cl. Man.* 11. For an executor upon a judgment recovered by testator in debt, *Mo. Int.* 374. On *non prof.* in writ of false judgment, *Pl. Gen.* 191.
- Count on judgment in debt by administrator *durante minori etate* of an executor, who after came of age, and married J. K. who died, and she prays execution against administrator (defendant in the judgment) and her husband, who paid debt and damages, and plaintiff acknowledges satisfaction thereon, *Bro. R.* 434.
- Entry of *scire facias* against an executrix upon a judgment obtained against testator, *Mo. Int.* 366. Plea, *ne unques executrix*, and issue, *Mo. Int.* 367. 1 *Inst. Cl.* 155. *Nul tiel* record pleaded after imparlance, *Mo. Int.* 368. 1 *Inst. Cl.* 147.
- Entry by executor of plaintiff against administrator of defendant after the death of plaintiff and defendant, *Off. Br.* 321. For an executor in dower, wherein judgment is had by default after two *nibils* returned, *Mo. Int.* 369.
- Scire facias* on a judgment against an executor after a year and a day, *Mo. Int.* 373. After year and day at the suit of executor, *Cl. Man.* 36. Alias *scire facias*, *Ibid.* 37. *Tbo.* 287.
- Scire facias* by executor against executor on a judgment for six thousand pounds obtained by testator of plaintiff against defendant's testator, defendant pleads release. Demurrer, 3. *Lev.* 269. *Bro. Met.* 341. *Scire facias* against executor, *Hanf.* 237. By executor, *quare executionem non* of debt and damages, 1. *Bro.* 321. Against administrator on recovery against him, *Hanf.* 255. Against administrator, *quare executionem non* of goods and chattels of intestate, *Hanf.* 321. 1. *Inst. Cl.* 157. By administrator on judgment obtained by intestate. Plea, that intestate was *sefo de se*, and money forfeited. Replication, statute of oblivion, 1. *Sav.* 353.
- Scire facias* by executor on a return of acknowledgment of recognizance before justices at the great sessions for the county of P. *Off. Br.* 313. On recognizance to our lord the king, *Ibid.* For the king before two justices of the peace, and recorded at the general session for the county, *Ibid.* By executor on a recognizance forfeited to the testator, *Ibid.* By executor on a judgment obtained by testator, sheriffs return *scire feci*. Appearance, and imparlance. Plea *nul tiel record*. Replication, *tiel record*, *Ibid.* 314.
- Judgment by default on two *nibils* against executor of administrator on a judgment obtained by administrator, *Off. Br.* 317.
- Entry of *scire facias* brought by administrator when *elegit* awarded, *Off. Br.* 318.

By administrator of husband, whose former wife was executrix, 326. *Scire facias* in *detinue* for value against executor, *Pl. Gen.* 188.

Scire facias by three executors; to the return, one executor and defendant appear; *scire facias* to two executors; *ad sequend.* &c. *dies datus* to one executor and defendant, *Off. Br.* 328. Entry of *scire facias* *ad sequend.* together against executor. Judgment by default and *capias*, and *exegi facias* against defendant, *Ibid.* 330. By defendant on executor's release to judgment obtained by testator, whereon defendant is outlawed by executor after judgment, and rendered himself to the fleet, *Ibid.* 329.

Against executor for damages recovered, 1. *Bro.* 326. Against executor to confess or deny discharge and release, *Off. Br.* 340.

Scire facias against executor for damages recovered against testator, defendant says nothing in his hands beyond to satisfy of recognizance by testator, *Off. Br.* 341.

By two executors, one plaintiff serjeant at law is made a judge and a knight, the other dead, *Off. Br.* 338.

Plea in abatement, that testator made another executor, who is not named in the writ, and issue, *Off. Br.* 347.

Scire facias by assignees on a statute of bankruptcy against executor on a judgment in debt recovered by the bankrupt against testator where *devastavit* is returned against executor on *scire facias*, *Ibid.* 215.

Plea by executor, recognizance in bar of execution, *Bro. Met.* 365.

Scire facias by administrator of T. S. to have execution on a judgment in C. B. for debt and damages. Plea, that within the year after judgment, and after twenty-four pounds, &c. was levied by virtue of a *testatum fieri facias*, and return that there were no other goods. W. was taken by a *capias ad satisfaciendum*, and on *habeas corpus* committed to the Fleet, and the warden voluntarily permitted him to escape. *Per curiam*, plea bad, 2. *Lut.* 1264.

Scire facias on judgment in ejectment brought by plaintiff against them, who entered after the death of defendant without naming the executors. Demurrer, and judgment for plaintiff, 2. *Lut.* 1267.

Scire facias against executor of one B. Plea, that a commission of bankruptcy issued against B. in time of Car. 2. and after his death another, which is yet pending. Judgment for plaintiff, for that it was not shewn that B. was indebted, &c., 2. *Lut.* 1273.

Plea in abatement, that testator made another executor not named in the writ, *Off. Br.* 347.

Entry of *scire facias* by executor after judgment, and judgment by default, *Off. Br.* 319. Judgment against executor by default, *Ibid.* 322.

Scire facias against administrator on a judgment against him when he should have assets. Plea, *plene administravit* on the day of the writ purchased. Replication, that the administrator had assets, 2. *San.* 219. 220.

Scire facias fieri et inquirendum brought against administrator, and *devastavit* returned on plea, that he hath not wasted the goods of intestate, 1. *San.* 303. 306.

Scire facias against executor upon a judgment recovered against testator in debt, *Mq. Int.* 372.

Entry of *scire facias* by administrator *de bonis non* by executor, and judgment by default, *Clif.* 678. Against executor of administrator on a judgment against administrator, *Ibid.* 679. To have possession in ejectment, *Ibid.* 683. For damages in ejectment against administratrix, *Ibid.* 680.

Entry on *scire facias*, return *nihil* against administratrix, who took husband, *Cl.* 470. Against executors after two *nibils* returned, defendant appears by attorney, pleads, *nul tiel record*, 1. *Inst. Cl.* 147. Against executor on a judgment recovered in the lifetime of testator, *Ibid.* 155. In trespass on the case for several

several promises, and assumpsit for damages, *Cl. Man.* 38. After the year and a day against two when one died, *Ibid.* 39.

Entry of *scire facias* by executor in debt where one renounced, *Off. Br.* 303. 324.

Entry of *scire facias* against an executor *quare executionem non de bonis propriis* after *devastavit* returned on a *scire facias* against two executors, *Off. Br.* 334.

Scire facias against an executor upon a judgment against him in debt, *Mo. Int.* 371.

Devastavit and *nihil* returned by sheriff made to *scire facias*, *Off. Br.* 260.

Scire facias by an attorney against an executor, who prays imparlance, *Off. Br.* 261.

By executor on a recovery for damages in dower, and two *nibils* returned, *Off. Br.* 262. By administrator, for residue, *Ibid.* 265.

Scire facias against executor to have execution *de bonis propriis* on inquisition, that he had wasted testator's goods; imparlance, and *non informatus*, *Co. Ent.* 270. *Moile*, 109. On *devastavit* returned by the sheriff, 2. *Br.* 120. *Moile*, 118. 146. *Br.* 227. By executor against executor on *devastavit* returned in life of plaintiff's testator, 3. *Br.* 364. On a *scire facias* against A. and B. executor, sheriff returns *nulla owa*, but that B. wasted. *Scire facias*, and judgment against him thereupon, *Moile*, 131. *Scire facias* against executor of E. on a judgment against E. as administrator in debt *Br.* 251. By executor against administrator, on a judgment obtained by administrator *durante minori etate* of executor against intestate in debt, *Br.* 282. Against executor, to whose hands testator's goods came after verdict on *plene administravit*, *Br.* 267. Against dean and chapter, bishoprick being vacant, to whose hands the goods of intestate came, *Br.* 246.

Scire facias by administrator against tenant. Imparlance, and further imparlance;oyer of writ and return Plea in *abatement*, that defendant was seised of other lands than in the return mentioned. Replication, no other terre-tenant or other land, *Ibo. Ent.* 281. Traversing that defendant was seised, &c. Demurrer.

Appearance by plaintiff and defendant to writ of *fi. fa. inquirendum* of waste, and *sci. fa.* and *vicecomes non misit breve*. Plea, *plene administravit*, and issue, *Tho.* 289.

Entry of a writ of *sci. fa. inquirendum* and *sci. fa.* Plea to *alias s. i. fi.* since *devastavit* returned, and issue on the traverse, *Ibid.* 290. Entry of return of a writ of *sci. fa. inquirendum. devastavit*, and *ca. fa.* *Ibid.*

By an executor against defendant in debt, and sheriff, where the sheriff on a *fi. fa.* took a lease for years made to defendant, which remained unfold for want of buyers, *Br.* 25.

Award on judgment to have execution of damages by an executor, *Ra. Ent.* 72.

Scire facias against executor of defendant in partition of lands demised for years, *Br.* 263. Against executors as to damages, and another who entered into the lands to take possession, *Br.* 253.

By administrator *durante minori etate* of executor against cognizor of a statute merchant, where cognizee died after extent awarded, *Moile*, 163. By executor of lands extended on a statute merchant, and *liberall* to testator, where another by another statute afterwards extended the same lands, and now holds them, *Reg. Jud.* 62.

By administrator against terre-tenant after insufficient return of extent on statute merchant, 5. *Br.* 368.

Against executor, for arrears of an annuity, *Br.* 267.

ON JUDGMENT BY EXECUTOR.

Scire facias by executor on judgment obtained by testator, *Ra. Ent.* 10. *Br.* 236. *Co. Ent.* 218. By administrator on judgment obtained by intestate, *Br.* 252. By surviving administrator, *Moile*, 118. By husband and wife executors, execution awarded by default, *Br.* 267.

By

By administrator of L. A. and R. on a judgment obtained by L. and A. executors of R. in debt, 238. By administrator against master and *cappelanos* of an hospital on judgment in debt obtained by intestate against predecessors, *Co. Ent.* 618. Judgment by husband and wife, executor in debt. Wife died, *haron* took to wife P. and died. *Sci. fa.* by P. administratrix as well of goods of testator as of husband and wife, executrix, 2. *Br.* 115.

Scire facias against executor for debt and damages recovered against him, *Off. Br.* 264. Entry of *sci. fa.* by P. G. J. P. and other executors in debt, at the return P. G. and others make default, J. P. appears, summons to sue together, and *alias sci. fa.* awarded, sheriff's return to summons, default made, and execution against defendant by default is adjudged to J. P. alone, *Off. Br.* 269.

By executor against the wife on a judgment in *account* against husband and wife, *Off. Br.* 270.

Judgment in ejectment, *sci. fa.* against executors of defendant and the occupier of the lands, to have execution the judgment for damages and possession. Demurrer to *sci. fa.* *Lev. Ent.* 162. *Off. Br.* 320. *Mo. Int.* 365.

Scire facias against administrator on a judgment in debt against prior administrator, *Off. Br.* 272. Against executors for the value, 271. and damages, 310.

Scire facias against administrator for arrears of rent annuity as well before as after judgment, 272. In annuity, where defendant, after judgment, is knighted, 326. For arrears of an annuity, 340.

Scire facias against executor to have execution *de bonis propriis* on an inquisition returned by sheriff that he had wasted testator's goods, *Off. Br.* 272.

Scire facias on a *devastavit* found, defendant pleads fully administered, traverses the *devastavit*, and issue thereon, *Lev. Ent.* 165.

Entry: *si fa.* and inquiry, appearance, return *nulla bona*. *Sci. fa.* on the return. Plaintiff avers no *devastavit*, and prays execution. Defendant pleads *plene administravit*; plaintiff replies assets, and issue thereon, *Clif.* 663.

Scire facias and inquiry directed to the chancellor of the duchy against administrator, 665. *Alias sci. fa.* after *scire feci inquirendum*, and *nihil* returned, and *devastavit* against the wife, *Ibid.* 666.

Alias sci. fa. after *sci. fi.* and enquiry and *devastavit* returned by the inquisition, and *nihil* returned by executor against an executor. *Sci. fi. inq.* against an executor, 669. Return *mandavit ballivo*; answer by bailiff. *Scire fa.* of damages, by sheriff *nul a bona elongavit*, and sold, *Sec. sci. fa.* 119. and *sci. fa.* 670.

Against *haron* and *seme executrix* in debt by executrix, where the husbands of plaintiff and defendant died after judgment obtained, *Off. Br.* 272. Judgment by default on *sci. fa.* in *account*, 273. By an executor, 304.

Entry *sci. fa.* in debt by administrator *durante minori etate* of executor, on a judgment obtained by testator against defendant, who appears and impails, judgment afterwards by *non sum informatus*, *Off. Br.* 274. *Han.* 244. *Sci. fi.* against administrator on a judgment against intestate on recognizance in C. B. *Off. Br.* 282. By executor against executor on judgment in debt, 283. *Bro. Met.* 341. Judgment by default against administrator for damages in case after two *nibils* returned, *Off. Br.* 283. *Mo. Int.* 120. *Sci. fa.* against executor, *Han.* 237. Against an executor upon a *devastavit* returned against him upon a *fi. fa.* against two executors, *Bro. Met.* 354. Against administrator, 368. *Han.* 236. 243. Against administrator for *devastavit* of goods of executor after debt recovered, *Off. Br.* 340. After a *fi. fa.* on a judgment by default against executor of goods of testator, and return of *nulla bona*, alledging a *devastavit*; writ of enquiry issued to sheriff, return of *devastavit*; *sci. fa.* awarded *de bonis propriis*, *Off. Br.* 284.

Judgment by default by administrator on judgment obtained by intestate, and *elegit* awarded, 285. 318. *Sci. fa.* thereon, 287.

Scire facias by executor against executor, for parcel of the debt and damages, *Off. Br.* 287. By administrator on judgment for damages in case obtained by testator,

237. In debt against *administrator*, *Id* Judgment by default, 288.

an inquiry by administrator against executor to have execution de bonis propriis
of Or. Br. 28.

and sheriff's return in London

the fact and inquisition taken before them, and *d vaßaruff und*, Off Br 291

of a term of years, whereof judgment of partition shou'd be made,

ly an attorney against administration to morose title of executor where it is
 ledged that goods came to his hand after judgment or other - s. 1 arda es
 bound to part See re tu ne l, and after special imparlance pleads that goods
 did not come to his hands after judgment, 2. Bro. 131.

100. *Plas. in fa.* by executor on judgment obtained by testator. Plea, that testator was defendant, and *a. fa.* directed to sheriff of N. who took defendant, and afterwards by plaintiff's consent permitted him to escape. Replication, protesting no *a. fa.* issued. Pleads, that sheriff did not take, &c. by virtue thereof, *Off. B.*

Surety by administrator on recovery in debt against a terre tenant after death of principal debtor, *Pl Gen* 191

Sub facias by administratrix, who had married the husband of an executor, Bro Met.

Executor pleads in bar a recognizance by defendant to the queen, *Off Br*, c2, p11, that testator acknowledged a recognizance to the queen because of which no assets, and plea adjudged bad, 302 *Plene a mi ist aris* generally c1, 11 *field* *Lads*, *And*, Plea special to set against administrator of one *nam* *ff*, 11 *ibid*.

Br. 304. 1. *Br. 325.* Against the dean and chapter of York, that of archbishop being vacant, *Off. Br. 304.*

Against executor, tenant in *assuer*, for damages recovered in w. te, *Bro Mot.* 358.
and judgment by *nil dicit*, *Off Br* 321

Ser. fa is by administrator *durante minor* &c a gain¹ widow on a judgment obtained against her and late husband by prior administrator, whose administration was revoked, *Moss*, 125 *Ser. fa* by A and B executors, at the return of *creo* A makes default *Ser. fa* to sue together, &c *Ka* 36 2 Br. 116 like *ser. fa* at the return thereof, A and defendant make default, judgment by default thereon against defendant *Ca. fa* at *ser. fa* to A to sue together, *Switzerland* the *creo* upon, Br 260. 2 Br. 116 *Cre. Ent* 618

Sure facias against administrators to have execution of all their goods which come to his hands after judgment on *plene administravit*, and afterwards to pay.

31. Against administrator, on a judgment against him in debt to be executed.

111. Against executor of executor, alleging a *disseisin* by prior executor. 1147,

Scire facias on enquiry of goods wasted by executor. Plea, *per se administravit* in

payment of debts, and did not waste. Demurrer, *Mau*, 110 2 Br 156

BY AND AGAINST EXECUTORS, &c.

tea to sci. fa. by executor, general release, Morle, 131.

plea by executor to *et. fa* that plaintiff took testator by *ca. fa.* in London. Repliation, protesting no such writ, for plea, was not taken by such, *A/b* 420

... in abatement to *sci. fa.* against A. and B. widow, administratrix, that A. took B. to

- B to wife, which plaintiff confesses leave to amend, *Ra.* 326. That plaintiff is not executor, and issue, 295.
- Plea to *sci fa.* against executor, that testator died in execution. Demurrer, *Co. L.* 619. (Against administrator), another administrator not named in the writ, *Id.* 1. Against A. and B. executors on a judgment obtained in an inferior court. A makes default, B. pleads that he had not notice of the suit in the inferior court and that he was never executor. Demurrer, *Ra.* 327. A. makes default, and judgment against him. Plea by B. *ne unques*, &c. Judgment for plaintiff, *Ra.* 329.
- Plea to *sci fa.* against executor, that testator was bound in a debt to the king, and defendant hath not assets *ultra*, &c. 2. *Br.* 136. By administrator, that intestate was bound to the king in two recognizances, whereon an extent issued out of the dutchy court of Lancaster, and were executed, and that intestate was indebted to the king in forty pounds for issues of land received by him, and that he had not assets in his hands to satisfy the forty pounds. Replication, that he hath assets *ultra*, &c. *Co. Ent.* 617. Against executor of B. that B. died intestate, and defendant administered only forty shillings, about his funeral. Replication that he hath goods to the value of the debt in his hands. Verdict for part of the debt only, *Moule*, 102.

IV. SCIRE FACIAS TO REPEAL LETTERS PATENT

PRECEDENTS IN
BOOKS OF PRACTICE,
REPORTERS, &c.

- Memorial* to his majesty for a *scire facias* to repeal letters patent, 2. *R. Pr. C.* B. 391.
- Warrant* for *scire facias* to repeal letters patent; attorney general's fiat, *Ibid.* 393.
- Scire facias* to revoke letters patent granted of the office of Somerlet herald. Return of the letters patent. Assignment of breach of duty in non-attendance. *Testatum fieri facias*, *Ibid.* 395. 398.

V. SCIRE FACIAS ON PARTICULAR STATUTES.

- VOL.
IX.
Page
512. Plea to *scire facias* on statute 31. *Hen.* 8. (for relanding goods after they had been shipped before they had arrived at the place mentioned in the bond), that the goods were not relanded, which they can prove by the certificate of two persons living at the place.
- Scire facias in audita querela* on the statute in B. R. *Lill. Ent.* 648.
- Scire facias* on 8. and 9. *W.* 3. *Clif.* 680. Where plaintiff after judgment took husband, *Ibid.* 681. *Bro. Pad.* 598. For damages recovered for the plaintiff's not prosecuting his writ in debt, *Bro. Met.* 357.

PRECEDENTS IN
BOOKS OF PRACTICE,
REPORTERS, &c.

VI. SCIRE

VI. SCIRE FACIAS IN ERROR, &c.

PRECEDENTS IN
BOOKS OF PRACTICE,
REPORTERS, &c.

- Scire facias quare executionem non* upon a judgment in an inferior court removed into B. R. and then depending, 2. Crompt. Pr. 346
- Writ of non prof.* in error from an inferior court after two *scire facias* and *nihil* returned, *Ibid.* 350
- Scire facias quare executionem non* in debt on judgment recovered out of C. B. by writ of error into B. R. 1. R. Pr. B. R. 523
- Scire facias* on a judgment in an inferior court removed into B. R. *Ibid.* 524
- Non prof.* after two *scire facias* in error in ejectment, *Lill. Ent.* 224, 236. *Hanf. Ent.* 158. *Ibid.* 526
- Scire facias* in B. R. against bail in error on a judgment recovered there to the exchequer chamber, where judgment was affirmed, *Ibid.* 390
- Scire facias* in error to reverse an outlawry in debt on judgment, *Ibid.* 460
- Scire feci* returned on a *scire facias executionem non* in error. Plea, *nul. tiel record.* Replication, taking issue, *Ibid.* 473
- Scire facias* on recognizance on a writ of error in B. R. on a judgment in C. B. Judgment by default, *Ibid.* 520
- Scire facias* in error *quare executionem non* on a judgment on a recognizance of bail in debt in C. B. *nihil* returned. Judgment by default, *Ibid.* 521
- Scire facias* for an *administratrix* to hear errors in the exchequer chamber, where her husband died after the judgment recovered, *Lill. Ent.* 638
- Scire facias quare executionem non* on a judgment reversed in B. R. on error in trespass after execution executed, *Ibid.* 641
- Scire facias* on a recognizance in error removed out of C. B. into B. R. by *certiorari*, *Ibid.* 643
- Scire facias* to hear errors on error to reverse an outlawry pronounced, *Ibid.* 647
- Scire facias* for restitution after a judgment (obtained by an attorney) reversed on a writ of error in B. R. The return. *Alias* awarded. Defendant craves *oyer* of *scire facias*, and pleads that he did not levy the money. Replication, levied by *fieri facias*. Rejoinder, and issue, *Ibid.* 650
- Scire facias* to hear errors on error to reverse a common recovery. Return. Plea, that A. and his wife are tenants, and not summoned, *Ibid.* 652
- Scire facias* in an assize of novel disseisin for an *administratrix* for damages adjudged in C. B. and that judgment after reversed in B. R. and the judgment of reversal reversed in parliament. Return. Demurrer to *scire facias*, and joinder, *Ibid.* 653
- Scire facias* on judgment on a recognizance on a *capias* out of C. B. after a writ of error, *Ibid.* 657
- Scire facias quare executionem non* for damages on a judgment in *formedon* removed by writ of error out of C. B. into B. R. *Ibid.* 658

Scire

PRECEDENTS IN
BOOKS of PRACTICE,
REPORTERS, &c.

- Scire facias* for an executor for costs on quashing a writ of error on judgment obtained by testator, - Lill. Ent. 658.
- Scire facias audiendum errores* on a judgment on a *scire facias* out of the court of the town of M. - Ibid. 660.
- Scire facias* on a judgment in the court of the city and corporation of Bristol removed by error into B. R. - Ibid.
- Scire facias* to hear errors in the exchequer chamber by administrator cum testamento annexo, - Ibid. 661.
- Scire facias quare possessionem non* on a judgment in ejectment removed out of C. B. by error, - Ibid.
- Scire facias* to hear errors, Bro. Vrad. 599: To assign errors, Ibid. 600. In writ of error on judgment in C. B. Hanf. 235. Entry thereof, and judgment affirmed, 1. Inst. Cl. 245. Judgment reversed, Ibid. 247. In an inferior court, Han. 237. *Scire facias* in error after judgment affirmed against administrator, Clif. 309.
- Scire facias* on outlawry reversed by writ of error, *quare* goods and chattels ought not to be redelivered, Han. 254.
- Scire facias* on traverse of an outlawry upon a *misnomer*, Bro. Met. 348. Attorney general acknowledges the traverse by special warrant, Ibid. 350. Against plaintiff, where defendant prays the outlawry may be annulled for want of proclamation, Bro. Met. 349.
- Against the heir in a writ of error on a writ of entry sur disseisin in the post, Han. 249.
- Scire facias quare executionem non* on judgment in C. B. reversed. Plea, error brought on the original judgment, which superseded execution, and traverse that execution was ever had, Thes. Br. 231.
- Plea of another *scire facias* on recognizance to *scire facias* in a writ of error returnable into the exchequer, Tho. Ent. 284.
- Entry of a *scire facias* to hear judgment on error brought by administrator *de bonis non*. Plea thereto, that he was living, and traverses the death, and issue on the traverse, Tho. Ent. 287.

ERRATA ET ADDENDA.

Index Analysis, p. lii. after 2. Courts Inferior (21), and under 1. *Courts Civil*
add 2. *Criminal* (21), and *dele* (21) after Courts Inferior.

xxix. Index at bottom to principal work, for p. 157 read p. 155.

